रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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WEEKLY

सं. 50] नई दिल्ली, दिसम्बर 9—दिसम्बर 15, 2012, शनिवार/अग्रहायण 18—अग्रहायण 24, 1934
No. 50] NEW DELHI, DECEMBER 9—DECEMBER 15, 2012, SATURDAY/AGRAHAYANA 18—AGRAHAYANA 24, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विधि और न्याय मंत्रालय

(विधि कार्य विभाग)

नई दिल्ली, 6 दिसम्बर, 2012

का.आ. 3567.—राष्ट्रपति, श्री महेन्द्र सिंह सिंघवी, वरिष्ठ अधिवक्ता का दिनांक 6 नवम्बर, 2012 (अपराह्न) से राजस्थान उच्च न्यायालय, जोधपुर में भारत के अपर महासॉलिसिटर के पद से त्यागपत्र स्वीकार करते हैं ।

[फा. सं. 18 (8)/2012-न्यायिक]

सुरेश चंद्र, संयुक्त सचिव एवं विधि सलाहकार

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

New Delhi, the 6th December, 2012

S.O. 3567.—The President is pleased to accept the resignation of Shri Mahendra Singh Singhvi, Senior Advocate as Additional Solicitor General of India in the High Court of Rajasthan at Jodhpur with effect from 6th November, 2012 (AN).

[F. No. 18(8)/2012-Judl.]

SURESH CHANDRA, Jt. Secy. & Legal Adviser

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 10 दिसम्बर, 2012

का.आ. 3568.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप -नियम (4) के अनुसरण में राजस्व विभाग, केंद्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड के निम्नलिखित कार्यालय, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. रक्षोपाय महा निदेशालय,
   सीमा एवं केन्द्रीय उत्पाद शुल्क,
   नई दिल्ली-110001.

[फा. सं. ई. -11017/1/2012-हिंदी-2]

चंद्र भान नारनौली, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 10th December, 2012

S. O. 3568.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Department of Revenue, Central Board of Excise & Customs, whereof more than 80% of the staff have acquired the working knowledge of Hindi :—

Office of the Directorate General of Safeguards,
Central Excise & Customs,
New Delhi-110001.

[F. No. E-11017/1/2012-Hindi-II]

CHANDRA BHAN NARNAULI, Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 3569.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उपधारा (1) के खण्ड (ड़) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री आनंदराव विष्णु पाटील, निदेशक, वित्तीय सेवाएं विभाग, वित्त मंत्रालय को श्री एस. गोपाल कृष्ण के स्थान पर तत्काल प्रभाव से और अगले आदेश होने तक, स्टेट बैंक आफ हैदराबाद के निदेशक मण्डल में सरकार द्वारा नामित निदेशक नामित करती है ।

[फा. सं. 6/3/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 12th December, 2012

S. O. 3569.—In exercise of the powers conferred by clause (e) of Sub-Section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominates, Shri Anandrao Vishnu Patil, Director, Department of Financial Services, Ministry of Finance, as Government Nominee Director on the Board of Directors of State Bank of Hyderabad with immediate effect and until further orders vice Shri S. Gopal Krishnan.

[F. No. 6/3/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 3570.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उपधारा (1) के खण्ड (ड़) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, सुश्री एना रॉय, निदेशक, वित्तीय सेवाएं विभाग, वित्त मंत्रालय को श्री एम. एस. आजाद के स्थान पर तत्काल प्रभाव से और अगले आदेश होने तक, स्टेट बैंक आफ पटियाला के निदेशक मण्डल में सरकार द्वारा नामित निदेशक नामित करती है ।

[फा. सं. 6/3/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 12th December, 2012

S. O. 3570.—In exercise of the powers conferred by clause (e) of Sub-Section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominates, Ms. Anna Roy, Director, Department of Financial Services, Ministry of Finance, as Government Nominee Director on the Board of Directors of State Bank of Patiala with immediate effect and until further orders *vice* Shri M. S. Azad.

[F. No. 6/3/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 12 दिसम्बर, 2012

का.आ. 3571.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 की धारा 25 की उपधारा (1) के खण्ड (ड़) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा श्री मिहिर कुमार, निदेशक, वित्तीय सेवाएं विभाग, वित्त मंत्रालय को श्री अमरीक सिंह के स्थान पर तत्काल प्रभाव से और अगले आदेश होने तक, स्टेट बैंक आफ बीकानेर एंड जयपुर के निदेशक मण्डल में सरकार द्वारा नामित निदेशक नामित करती है ।

[फा. सं. 6/3/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 12th December, 2012

S. O. 3571.—In exercise of the powers conferred by clause (e) of Sub-Section (1) of Section 25 of The State Bank of India (Subsidiary Banks) Act, 1959, the Central Government, hereby nominates, Shri Mihir Kumar, Director, Department of Financial Services, Ministry of Finance, as Government Nominee Director on the Board of Directors of State Bank of Bikaner & Jaipur with immediate effect and until further orders *vice* Shri Amrik Singh.

[F. No. 6/3/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 13 दिसम्बर, 2012

का.आ. 3572.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीण उपबंध) स्कीम, 1970/1980 के खंड 9 के उपखंड (1) और (2) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा (3) के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय

रिजर्व बैंक के परामर्श से, एतद्द्वारा, यूको बैंक के वरिष्ठ प्रबंधक श्री डी.एन. ठाकुर (जन्म तिथि : 01-03-1958) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए अथवा यूको बैंक के अधिकारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, यूको बैंक के निदेशक मण्डल में अधिकारी कर्मचारी निदेशक नियुक्त करती है ।

[फा. सं. 6/41/2010-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 13th December, 2012

S. O. 3572.—In exercise of the powers conferred by clause (f) of Sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) & (2) of Clause 9 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government after consultation with the Reserve Bank of India, hereby appoints Shri D. N. Thakur (DoB : 01-03-1958), Senior Manager, UCO Bank, as Officer Employee Director on the Board of Directors of UCO Bank for a period of three years from the date of notification of his appointment or until he ceases to be an officer of the UCO Bank or Until further orders, whichever is the earliest.

[F. No. 6/41/2010-BO-I]

VIJAY MALHOTRA, Under Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 7 दिसम्बर, 2012

का.आ. 3573—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स ईटालैब (गोआ) प्राइवेट लिमिटेड, ईटालैब हाउस, फोन्डेकार बिल्डिंग, सामने कारमेलाइट मोनास्ट्री, मालभट्ट, मारगो--गोआ 403 601 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 के साथ उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-1, अर्थात् लौह अयस्क, मैंगनीज अयस्क, फैरोमैंगनीज और बाक्साइट के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन, उक्त खनिजों और अयस्कों का गोआ में, निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :-

(i) मैसर्स ईटालैब (गोआ) प्राइवेट लिमिटेड, खनिज और अयस्क समूह-1 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का प्रमाण-पत्र अनुदत्त करने के लिए उनके द्वारा अनुसरण की गई निरीक्षण की पद्धति का परीक्षण करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगा; और

(ii) मैसर्स ईटालैब (गोआ) प्राइवेट लिमिटेड, इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निदेशों से आबद्ध होगा, जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित में दिए जाएं ।

[फा. सं. 4/11/2012-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 7th December, 2012

S. O. 3573.—In exercise of the powers conferred by the sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. Italab (Goa) Pvt. Ltd. located at Itlab House, Fondekar Building, Opposite Carmelite Monastry, Malbhat, Margao—Goa-403 601, India as an Agency for a period of three years from the date of publication of this notification in the Official Gazette, for the inspection of Minerals and Ores Group-I, namely, Iron Ore, Manganese ore, ferromanganese and bauxite, specified in the Schedule annexed to the Ministry of Commerce notification number S. O. 3975 dated the 20th December 1965, prior to export of said mainerals and ores at Goa, subject to the following conditions, namely :—

(i) M/s Itlab (Goa) Pvt. Ltd. shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965; and

(ii) M/s Itlab (Goa) Pvt. Ltd. in the performance of its function under this notification shall be bound by such directions as the Director (Inspection and Quality Control) may give in writing, from time to time.

[F. No. 4/11/2012-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3574.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आईईसी 60060-2 : 2010 उच्च वोल्टता परीक्षण तकनीकें—भाग 2 मापन पद्धति	–	22-11-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ ईटी 19/टी-23]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 22nd November, 2012

S.O. 3574.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standard	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS/IEC 60060-2 : 2010 High Voltage Test Techniques Part 2 Measuring Systems	—	22-11-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 19/T-23]

R. C. MATHEW, Scientist 'F' & Head (Electro-technical)

नई दिल्ली, 23 नवम्बर, 2012

का.आ. 3575.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आईईसी 62271-100 : 2008 उच्च वोल्टता के स्विचगियर और नियंत्रणगियर भाग 100 प्रत्यावर्ती धारा के परिपथ ब्रेकर	आई एस 13118 : 1991-	23-11-2012
2.	आई एस/आईईसी 62271-109 : 2008 उच्च वोल्टता के स्विचगियर और नियंत्रणगियर भाग 109 प्रत्यावर्ती धारा के सीरिज कैपेसिटर बाह्य-पथ स्विच परिपथ ब्रेकर	—	23-11-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ ईटी 08/टी-38, टी-45]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 23rd November, 2012

S.O. 3575.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standard	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS/IEC 62271-100 : 2008 High Voltage Switchgear and Controlgear Part 100 High-Voltage Alternating-Current Circuit-Breakers	Superseding IS 13118 : 1991	23-11-2012
2.	IS/IEC 62271-109 : 2008 High Voltage Switchgear and Controlgear Part 109 Alternating-Current Series Capacitor By-Pass Switches	–	23-11-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. ET 08/T-38, T-45]

R. C. MATHEW, Scientist 'F' & Head (Electro-technical)

नई दिल्ली, 5 दिसम्बर, 2012

का. आ. 3576.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं ।

4466 GI/12-2

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा	भाग	अनुभाग	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01.	L-9963513	02-11-2012	मै. शर्मा वाटर इण्डस्ट्रीस, प्लॉट नं. 1208, सी ब्लॉक, एस.जी.एम. नगर, 33 फुट रोड, बड़खल, फरीदाबाद, (हरियाणा)	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	–	–	2004
02.	L-9963614	02-11-2012	मै. जय भवानी इन्टरप्राइसिस, मकान नं. 140, बसेलवा कलोनी, ओल्ड फरीदाबाद, (हरियाणा)	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	–	–	2004
03.	L-9963715	02-11-2012	मै. कोशिका प्लाइवुड प्रा. लि., 42 के. एम. माइलस्टोन, दिल्ली रोहतक रोड, एनएच-10 डाकघर रोहद, बहादुरगढ़, जिला झझर (हरियाणा)	वीनियरड डैकोरेटिव प्लाइवुड	1328	–	–	1996
04.	L-9964313	05-11-2012	मै. निर्मल पौलीफैव प्रा.लि., 2 के. एम. माइलस्टोन, दिल्ली रोड, जिला रेवाड़ी-123401 (हरियाणा)	सिंचाई यंत्र-उत्सर्जक	13487	–	–	1992

[सं. सी एम डी/13 : 11]

एम. के. जैन, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 5th December, 2012

S.O. 3576.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No. CM/L	Grant Date	Name and Address of the Licence	Title of the Standard	IS No.	Part	Section	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01.	L-9963513	02-11-2012	M/s. Sharma Water Industries, Plot No. 1208, C Block, S.G.M. Nagar, 33 Feet Road, Badkhal, Faridabad, (Haryana)	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543	–	–	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
02.	L-9963614	02-11-2012	M/s. Jai Bhavani Enterprises, House No. 140, Baselwa Colony, Old Faridabad, (Haryana)	Packaged Drinking Water (Other than Packaged Natural Mineral Water)	14543	–	–	2004
03.	L-9963715	02-11-2012	M/s. Koshika Plywood (P) Ltd., 42 K.M. Stone, Delhi Rohtak Road, NH-10, P.O. Rohad Bahadurgarh, Distt. Jhajjar, (Haryana)	Veneered Decorative Plywood	1328	–	–	1996
04.	L-9964313	05-11-2012	M/s. Nirmal Polyfab Pvt. Ltd., 2 Km. Milestone, Delhi Road, Distt. Rewari-123401, (Haryana)	Irrigation Equipment-Emitters	13487	–	–	1992

[No. CMD/13 : 11]

M. K. JAIN, Scientist 'F' & Head

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3577.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15853 : 2009 वस्त्रादि-सूती, मानव निर्मित रेशों व तन्तुओं एवं उनके मिश्रण से बने सूट के कपड़े-विशिष्टि	संशोधन संख्या 1 नवम्बर, 2012	नवम्बर, 2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टीएक्सडी/जी-25]

अनिल कुमार, वैज्ञानिक 'ई' एवं प्रमुख (टीएक्सडी)

New Delhi, the 5th December, 2012

S.O. 3577.—In pursuance of clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendments, to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. Title and Year of the Indian Standards	No. and year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 15853 : 2009 Textiles—Woven suitings made of cotton, man-made fibres/filaments and their blends—Specification	Amendment No. 1 November, 2012	November, 2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TXD/G-25]
ANIL KUMAR, Scientist 'E' & Head (TXD)

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3578.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15852 : 2009 वस्त्रादि-सूती, मानव निर्मित रेशों व तन्तुओं एवं उनके मिश्रण से बने कमीज़ के कपड़े-विशिष्टि	संशोधन संख्या 1 नवम्बर, 2012	नवम्बर, 2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टीएक्सडी/जी-25]
अनिल कुमार, वैज्ञानिक 'ई' एवं प्रमुख (टीएक्सडी)

New Delhi, the 5th December, 2012

S.O. 3578.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. Title and Year of the Indian Standards	No. and Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 15852 : 2009 Textiles—Woven shirtings made of cotton, man-made fibres/filaments and their blends—Specification	Amendment No. 1 November, 2012	November, 2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TXD/G-25]

ANIL KUMAR, Scientist 'E' & Head (TXD)

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3579.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 8329 : 2000 पानी, गैस और मलजल के लिए अपकेन्द्रत ढले (स्पन) तन्य लोहा के दाब पाइप-विशिष्टि (तीसरा पुनरीक्षण)	संशोधन संख्या 2 नवम्बर, 2012	26-11-2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 6/टी-38]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 5th December, 2012

S.O. 3579.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and Title of the Standards(s)	No. and year of the amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 8329 : 2000 Centrifugally cast (spun) ductile iron pressure pipes for water gas and sewage—Specification (Third revision)	Amendment No. 2 November, 2012	26-11-2012

Copies of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MTD 6/T-38]

P. GHOSH, Scientist 'F' and Head (Met Engg.)

4466 GI/12-3

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3580.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15851 : 2009 वस्त्रादि-सूती, मानव निर्मित रेशों व तन्तुओं एवं उनके मिश्रण से बनी साड़ियाँ—विशिष्टि	संशोधन संख्या 1 नवम्बर, 2012	नवम्बर, 2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ टीएक्सडी/जी-25]

अनिल कुमार, वैज्ञानिक 'ई' एवं प्रमुख (टीएक्सडी)

New Delhi, the 5th December, 2012

S.O. 3580.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendments, to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. Title and Year of the Indian Standards	No. and Year of the amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 15851 : 2009 Textiles—Saris made of cotton, man-made fibres/filaments and their blends—Specification	Amendment No. 1 November, 2012	November, 2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. TXD/G-25]

ANIL KUMAR, Scientist 'E' & Head (TXD)

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3581.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	संशोधन संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 2830 : 2012 सामान्य संरचना इस्पात हेतु पुनर्वेल्लन के लिए कार्बन ढलवाँ इस्पात इंगट, बिलेट, ब्लूम एवं स्लैब-विशिष्टि (तीसरा पुनरीक्षण)	संशोधन संख्या 1 नवम्बर, 2012	26-11-2012
2.	आईएस 3024 : 2006 दिशात्मक कण विद्युत इस्पात की चद्दर एवं पत्ती (दूसरा पुनरीक्षण)	संशोधन संख्या 3 नवम्बर, 2012	26-11-2012
3.	आईएस 649 : 1997 शक्ति विद्युतीय उपकरणों के चुम्बकीय परिपथ के लिए इस्पात चद्दरों की परीक्षण विधि (दूसरा पुनरीक्षण)	संशोधन संख्या 3 नवम्बर, 2012	30-11-2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ एमटीडी 4/टी-94, 69, 200]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 5th December, 2012

S.O. 3581.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	IS. No. and Title of the amendment(s)	No. and year of the amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 2830 : 2012 Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes (Third revision)	Amendment No. 1 November, 2012	26-11-2012
2.	IS 3024 : 2006 Grain oriented electrical steel sheet and strip (second revision)	Amendment No. 3 November, 2012	26-11-2012
3.	IS 649 : 1997 Method of testing steel sheets for magnetic circuits of power electrical apparatus (second revision)	Amendment No. 3 November, 2012	30-11-2012

Copy of this amendments is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 4/T-94, 69, 200]

P. GHOSH, Scientist 'F' & Head (Met Engg.)

नई दिल्ली, 06 दिसम्बर, 2012

का.आ. 3582.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किये गये हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 6047 : 2009 बर्तनों की सफाई के लिए अभिमार्जन उत्पाद--विशिष्टि (पहला पुनरीक्षण)	संशोधन संख्या नं. 1 जून, 2012	15 जुलाई, 2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं । भारतीय मानकों को http://www.standardsbis.in. द्वारा इंटरनैट पर खरीदा जा सकता है ।

[संदर्भ सीएचडी 25/आईएस 6047]

एस. एन. चटर्जी, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन विभाग)

New Delhi, the 6th December, 2012

S.O. 3582.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendments, to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 6047 : 2009 Scouring Products for utensil cleaning — Specification (First revision)	Amendment No. 1 June, 2012	15 July, 2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at :http://www.standardsbis.in.

[Ref. CHD 25/IS 6047]

S. N. CHATTERJEE, Scientist 'F' & Head (CHD)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 14 दिसम्बर, 2012

का.आ. 3583.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के सम्बंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात् :-

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री अरुण कुमार झा सक्षम प्राधिकारी, पटना-मोतीहारी--बैतालपुर शाखा पाइपलाइन एण्ड पीएचबीपीएल संवर्धन परियोजना पाइपलाइंस डिवीजन, इंडियन ऑयल कॉर्पोरेशन लिमिटेड डाकघर धेल्वान, वाया--लोहिया नगर सिपारा, पटना बिहार-800 020	बिहार राज्य

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[सं. आर-25011/14/2012-ओ आर]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 14th December, 2012

S.O. 3583.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Piplines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the said Schedule :—

SCHEDULE

Name and address of the Authority	Area of jurisdiction
(1)	(2)
Shri Arun Kumar Jha Competent Authority, Patna-Motihari-Baitalpur Branch Pipeline & Augmentation of PHBPL Pipelines Division Indian Oil Corporation Ltd. P. O. Dhelwan, Via-Lohiya Nagar, Sipara, Patna Bihar-800 020	State of Bihar

This notification is applicable from the date of issue.

[No. R-25011/14/2012-OR]

PAWAN KUMAR, Under Secy.

4466 GI/12-4

श्रम और रोजगार मंत्रालय

नई दिल्ली, 15 नवम्बर, 2012

का.आ. 3584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, स्माल आर्म फैक्ट्री,काल्पी, रोड, कानपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायायल, कानपुर के पंचाट (संदर्भ संख्या 10/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-14025/04/1988/डी-II(बी)-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th November, 2012

S.O. 3584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the General Manager, Small Arms Factory, Kalpi Road, Kanpur and their workman, which was received by the Central Government on 12-11-2012.

[No. L-14025/04/1988/D-II (B)-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 10/07

Between : The vice President
United Trade Union Congress (UP Branch),
111-A/310, Ashok Nagar, Kanpur

And

The General Manager,
Small 'Arms Factory'
Ministry of Defence,
Government of India,
Kalpi Road,
Kanpur

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-14025/04/88/-D-II(B) dated 9-4-07, has referred the following dispute for adjudication to this tribunal.

2. Whether the demand of the United Trade Union Congress for wages of Grade "B" Fitters/Millers for the workmen classified as Grade "C" Fitters/Millers listed in the annexure for the period shows against each of them is legal and justified? If so to what relief the workmen are entitled to?

3. Brief facts are–

4. It is alleged by workman Sri Virendra Kumar Pandey and others who are 29 in number mentioned in the list filed along with the claim statement that they have been employed initially in the pay scale of Grade "C" but these workers have been carrying out work of milling, turning grinding etc, which' is of grade "B" which falls under skilled job. The opposite party has taken the work of high skilled nature from these workers but they were given the pay scales of semi scale workers. They have been agitating their grievances since over 35 years claiming pay scale of skilled category i.e. of grade "B" but the opposite party did not accede their request. Therefore, they have prayed that these workers be given pay scale of grade "B".

5. Opposite party has filed the written statement contradicting the claims of the claimants. It is alleged that the reference order totally vague and incomplete as it does not provide any specific cut off date from which it can be inferred that the workmen had been working since that period. These workmen had never been working on grade "B" post and they have never demanded the grade "B", It is stated that these workers were categorized as Grade "C" during the period mentioned in the list and Grade "C" denotes Semi Skilled workers. The normal channel for their up gradation to Grade "B" is that the workman have to pass the requisite trade test as and when conducted by the management. Unless they are promoted to grade "B" their contention has no relevance. Therefore, it is prayed that the claimants are not entitled to any relief.

6. Claimant has adduced himself by name Moti Lal Shukla as W.W.1.

7. Opposite party has not adduced any oral or documentary evidence in support of their claim.

8. Heard and perused the record.

9. It is a fact that there is no documentary cogent evidence on behalf of the union on the point that these workmen had worked on the post of Miller,Grinder etc. and worked in skilled category as claimed by these claimants. There is no specific date month or year from which it can be inferred that these workmen had been working at the post as claimed by them.

10. These applicants did not summon any record from the opposite party, had they been employed by the opposite party for the work miller, grinder etc.

11. It is alleged that they have been agitating their grievances since last 35 years but no such documents have been filed to show that they have been agitating their demands as claimed by them.

12. It is also a fact that these workmen had never been promoted by the opposite party or upgraded in the "B" grade pay. Therefore, in the given circumstances when they have not been promoted in Grade "B", I find that it will not be fair to give them the scale of Grade "B".

13. It has also come in evidence that out of 29 workers most of them have expired and some of them do not want to press their cases and this case is left only for six workers.

14. Therefore, considering the facts and circumstances of the case I am of the view that the claimants have failed to prove that they had been working and the work was being taken from them in a skilled grade. Moreover, there is no specific cut off date in the reference order as well as in the claim statement or in the evidence; therefore, the claim cannot be decided in favour of the union.

15. Accordingly it is held that the demand of the union in the present reference is not sustainable in the eye of law as such no relief can be granted in the present case and as such the reference is bound to be decided against the union and in favour of the management.

16. Reference is answered accordingly against the union and in favor of the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2012

का.आ. 3585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकाम डिस्ट्रीक मैनेजर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या सी. जी. आई. टी./एन.जी.पी./48/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-40012/98/1989/डी-2(बी)-आई आर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 16th November, 2012

S.O. 3585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/48/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the Telecom District Manager, and their workman, which was received by the Central Government on 12-11-2012.

[No. L-40012/98/1989/D-2 (B)-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHI R J. P. CHAND PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/48/2003

Date : 13-2-2012

Party No. 1 : The Telecom District Manager,
Saraf Chambers, Nagpur 440001

Versus

Party No. 2 : Shri M. V. Kale
N-2-T, Snehanagar, Wardha Road,
Nagpur-440012

AWARD

(Dated 13th February, 2012)

In exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 .of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecommunication and their workman Shri M.V. Kale, for adjudication, as per letter No.L-40012/98/89-D-2(B) dated 30-1-1990, with the following schedule:—

"Whether the action of the management of Telecommunication, Nagpur by terminating the services of Shri M. V. Kale, w.e.f. 3-5-89 is justified? If not, to what relief the workman is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement. Inspite of several adjournments, no statement of claim was filed on behalf of the workman. However, the management of the Telecommunication filed the written statement pleading inter-alia that the workman was a retired employee and he was engaged as short duty staff on hourly basis @ Rs. 4.90 per hour and he worked from 29-08-1986 to 3-05-1989 and as the workman was working on hourly basis, no notice was required to by served on him and the removal of the workman was in accordance with the DOT circular and due to the completion of specific work and the workman is not entitled for any relief.

3. It is well settled that when a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of workman and he could not be entitled to any relief.

4. In this case, the workman has not filed any written statement of claim, setting out the grounds on which the order is challenged. He has also not adduced any evidence in support of his claim. As such, the reference cannot be answered in favour of the workman and he is not entitled to any relief. Hence, it is ordered:—

ORDER

The action of the management of Telecommunication, Nagpur by Terminating the services of Shri M. V. Kale, w.e.f. 3-5-89 is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 नवम्बर, 2012

का.आ. 3586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 170/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2002 को प्राप्त हुआ था।

[सं. एल-41012/101/2002-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 16th November, 2012

S.O. 3586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway, and their workman, received by the Central Government on 16-11-2012.

[No. L-41012/101/2002-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM, Presiding Officer

I. D. No. 170/2002

Ref. No. L-41012/101/2002-IR (B-I) dated : 14-11-2002

Between : The Divisional Organization Secretary
Uttar Railway Karmchari Union
96-196, Old Ganeshganj
Lucknow (U.P.) - 226001.
(Espousing cause of Shri S.K. Tripathi)

AND

Between : 1. The Chief Factory Manager
Northern Railway, Loco Workshop
Charbagh, Lucknow (U.P.) - 226001

2. The Sr. Personnel Officer
Northern Railway, Loco Workshop
Charbagh, Lucknow - 1

AWARD

1. By order No. L-41012/101/2002-IR (B -I) dated: 14-11-2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Organization Secretary, Uttar Railway Karmchari Union, 96-196, Old Ganeshganj, Lucknow and the Chief Factory Manager, Northern Railway, Loco Workshop, Charbagh, Lucknow & the Sr. Personnel Officer, Northern Railway, Loco Workshop, Charbagh, Lucknow for adjudication.

2. The reference under adjudication is:

"KYA Prabandhan, Uttar Railway Dwara Shri S.K. Tripathi Putra Shri Shambhu Dayal Tripathi KO Varishthata Ke Aadhar Par 1-1-1984 Evam 6-7-1990 KO Padonnati Nahi Kiya Jana Nayyochit Evam Nayaysangat Hai? Yadi Nahi to Karmkaar Kis Anutosh KO Pane KA Adhikaari Hai?"

3. The case of the workman's union, in brief, is that the workman, S.K. Tripathi was working as Furnace man in the Brass Foundry Shop in Locomotive Workshop, Northern Railway, Lucknow and sought transfer to the post of Store Issuer in Diesel, an ex-cadre post, in view of letter dated 11-11-76 of Dy. C.M.E. (W); and accordingly was selected against the post of Store Issuer in Diesel Shop and was assigned seniority with Diesel Fitters in Diesel shop w.e.f. 1-1-83. It has been alleged by the union that one Shri K.L. Sahu, a workman junior to the workman, S.K. Tripathi returned to his original shop after exercising option to return whereas no such option was made available to the workman and his name was struck of from the seniority list of his parent cadre, which resulted into promotion of his junior, K.L. Sahu; whereas the workman was not promoted w.e.f. 6-7-90. The union has alleged that non-promotion of the workman has led to financial loss to the workman during service as well on retirement w.e.f. 31-7-93. Accordingly, the workman's union has prayed that the management of railways be directed to provide benefits at par with that of K.L. Sahu vide S.O. No. 64 dated 9-2-94 and thereby to enhance retrial benefits.

4. The management of the railway has denied the allegation of the workman's union by submitting its written statement; wherein it has stated that the workman and

K.L. Sahu opted to be absorbed as Diesel Skilled Fitter in the newly created Diesel Shop and the workman was absorbed on passing the Trade Test on 2-9-1980; whereas K.L. Sahu did not appear in the said Trade Test, resultantly was repatriated to his parent cadre i.e. Foundry Shop. The management has submitted on absorption of the workman in Diesel Shop his lien and seniority in Foundry Shop came to an end and he cannot claim promotion in Foundry Shop after absorption in Diesel Shop w.e.f. 2-9-1980 as K.L. Sahu on repatriation got promotion on proforma basis in Foundry Shop; whereas the workman on absorption in Diesel Shop cannot claim his seniority in Foundry Shop. It has submitted that Diesel Shop has its own separate cadre and establishment. Accordingly, the management has prayed that the claim of the workman's union to promote the workman at par with K.L. Sahu, extended to him vide S.O. No. 64 dated 9-2-1994 is not maintainable and the same is liable to be rejected without any claim to the workman concerned.

5. The workman has filed rejoinder whereby he has only reiterated his averments already made in the statement of claim and has introduced nothing new.

6. The workman's union has filed photocopy of the documents in support of their case; whereas the management has not filed any. The union has examined workman and in rebuttal the management has examined Shri Om Prakash, Sr. Personnel Officer in support of their respective stands. The parties forwarded arguments in support of their case.

7. The case of the workman is that the workman in spite of being senior to one Shri K.L. Sahu, who was in his Shop, was denied promotion whereas K.L. Sahu was given promotion, which resulted pecuniary loss to the workman. The representative of the workman has argued that the management did not obtain any option from the workman either to remain in Diesel Shop or to go back in Foundry Shop; whereas K.L. Sahu was repatriated to Foundry Shop after taking option from him. It was further argued that management should have been extended all benefits to the workman available to him in his parent cadre, who was working in an ex-cadre post.

8. Per contra, the authorized representative of the management has argued that once the workman got absorbed in Diesel Shop, he lost his lien and seniority in the Foundry Shop and he cannot claim his seniority over K.L. Sahu who was repatriated to Foundry Shop due to his failure in qualifying the trade test. Beside it was also submitted that Foundry Shop and Diesel Shop are two different cadre and have their different seniority list and the employees working therein are given benefits accordingly.

9. I have given my thoughtful consideration to the rival contentions of the parties and scanned entire evidence on record.

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10. The workman in his evidence has stated that the management did not seek option from the workman that whether he wants to remain in Diesel Shop or wants to go back to his parent department. He has further stated that as per Rule before fixing seniority, the management was required to keep in mind that an employee who is working at ex-cadre post has to be considered for promotion etc. in his parent cadre and his lien has to be maintained there; but the management failed to do so. It has been further stated that K.L. Sahu who was junior to him, was called back to parent department after taking option from him; this resulted into promotion of K.L. Sahu whereas he was deprived of the same in spite of being senior to K.L. Sahu. The authorized representative of the management, on 30-1-2006, denied to cross-examine the workman's witness and endorsed a note to the effect.

8. In rebuttal, the management witness stated that the workman was absorbed in Diesel Shop, on qualifying prescribed Trade Test on 2-9-90; whereas K.L. Sahu was repatriated to his parent cadre i.e. Foundry Shop due his failure to qualify the Trade Test. As a result of workman's absorption in Diesel Shop his lien and seniority in Foundry Shop came to an end due to his absorption in Diesel Shop. It was further stated that the workman and K.L. Sahu have no relation to each other as both of them working in different units, availing their separate seniority and promotion in their respective cadre. In cross-examination, it is stated that both the shops have different seniority group and accordingly their promotion is done in accordance with their seniority in their respective shop. Thus, it is clear that both the persons were in different shops.

9. On careful examination of the entire evidence on record, oral as well as documentary, it comes out that the workman, S.K. Tripathi and K.L. Sahu were working in the Foundry Shop and on their transfer to ex-cadre post in Diesel Shop, the workman S. K. Tripathi was absorbed in the Diesel Shop on qualifying the prescribed Trade Test w.e.f. 2-9-90; whereas the other one viz. K.L. Sahu could not qualify the same, resultantly, was repatriated to his parent cadre i.e. Foundry Shop. As per Rule, an employee enjoys lien, seniority and other benefits in his parent cadre till he is working on an ex-cadre post; but as soon as he gets absorbed on ex-cadre post, his lien, in the parent cadre, terminates with his absorption on the ex-cadre post; and accordingly, his name got struck of from the seniority list of his parent cadre and his becomes junior most in the ex-cadre.

In present case, when the workman got absorbed in the Diesel Shop, he lost his lien and seniority in Foundry Shop, hence, he cannot claim his seniority over K.L. Sahu who was repatriated to the Foundry Shop.

10. In view of the discussions made above, I am of considered opinion that there was no infirmity in not

treating the workman at par with K.L. Sahu since both of them were working in different Shops/cadre and having different seniority in their respective cadre. Accordingly, I come to the conclusion that the action of the management of the Northern Railway in not promoting the workman in 1-1-1984 and 6-7-1990 on the basis of seniority was neither illegal nor unjustified.

11. Accordingly, the reference is adjudicated against the workman S.K. Tripathi; and I come to the conclusion that he is not entitled to any relief.

12. Award as above.

Lucknow
23-10-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2012

का.आ. 3587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 144/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-11-2012 को प्राप्त हुआ था ।

[सं. एल-22012/346/1995-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th November, 2012

S.O. 3587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 144/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL and their workman, which was received by the Central Government on 20-11-2012.

[No. L-22012/346/1995-IR (C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/144/97

Presiding Officer: SHRI MOHD. SHAKIR HASAN

General Secretary,
MP Koyla Mazdoor Sabha(HMS),
Post South Jhagrakhand Colliery,
Distt. Surguja (MP) .....Workman/Union

Versus

Sub Area Manager,
Duman Hill Colliery,SECL,
Post Sonawani Colliery,
Distt. Surguja (MP) .....Management

AWARD

Passed on this 9th day of October, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/346/95-IR(C-II) dated 20-5-97 has referred the following dispute for adjudication by this tribunal:—

"Whether the demand of the M.P.Koyla Mazdoor Sabha (HMS) for regularizing the services of 35 contract workers (list enclosed) of Duman Hill Colliery of SECL is legal and justified? If so, to what relief are the concerned workmen entitled and from which date?"

2. The case of the Union/workmen, in short, is that Shri Arvind and 34 others were engaged by the Sub Area Manager, Duman Hill for various types of works such as cleaning of belt, repairing of bunkers and other miscellaneous mining jobs from 1986 to 1992. These works were done departmentally and no contractor workers were utilized for the same. These workers were engaged in permanent and perennial nature of jobs and were continuously working for years together and had completed 240/190 days many time since their deployment. They had worked under the control, direction and supervision of the officials of the management of Chirimiri Area. There was relationship of employer and employee between the management of Chirimiri Area and the workers. The management engaged a contractor for payment of wages and they were being paid less wages. The contractor was camouflage in the eye of law. The management of Chirimiri Area was not entitled to engage any contractor under the Contract Labour (Regulation and Abolition)Act, 1970. The works performed by these workers were also performed by the regular workers of the management. It is stated that the management terminated their services after continuous services of 6 years in 1992 without complying the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). The termination is void ab-initio. It is submitted that it is declared that the demand of the Union for regularizing the services of 35 workers of Doman Hill Colliery is legal and justified.

3. The management appeared and filed Written Statement in the case. The case of the management, interalia, is that the reference is not maintainable as it is vague. The alleged workmen are not workmen under Section 2(s) of the Act, 1947. They were never employed by the management of SECL or through the contractors and there was no relationship of employer and employee between the management of SECL and the alleged

workmen. The management awarded contract to the contractors for execution of casual civil nature of work which were not permanent and perennial in nature. The management has not violated any provision of the law. It is submitted that the alleged workmen are not entitled to any relief.

4. On the basis of the pleadings and the reference, the following issues are framed for adjudication—

I. Whether the demand of the Union for regularizing the services of 35 contract workers of doman hill colliery of SECL is legal and justified?

II. Whether the action of the management in terminating the services of 35 workers from the year 1992 is justified?

III. To what relief the workmen are entitled?

5. **Issue No. I**

The Union has not examined either oral or documentary evidence to prove his case inspite of sufficient time was granted to him. Lastly the evidence of the Union/workmen was closed on 18-5-2010. This is clear that the Union has failed to prove that the alleged workmen were in the direct employment of the management and the contractor was a camouflage.

6. On the other hand, the management has examined one witness. The management witness Shri Jafar Mohammad is presently working as Personnel Manager at Duman Hill Colliery. He has supported the case of the management. He has stated that Shri Ravindra and 34 others were never engaged by Sub Area Manager, Duman Hill Colliery at any time nor they were engaged by Chirimiri Area of SECL. He has further stated that the alleged workmen were never employed directly or through contractor. This shows that there was no relationship of employer and employee between the management of SECL and the alleged workmen. This issue is decided against the Union and in favour of the management.

7. **Issue No. II**

On the basis of the discussion made above, it is clear that there is no relationship of employer and employees. As such the question of termination of the alleged workmen does not arise. This issue is accordingly answered.

8. **Issue No. III**

It is clear that the Union has no case in absence of evidence on his behalf and therefore the workmen are not entitled to any relief. The reference is accordingly answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2012

का.आ. 3588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 52/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-11-2012 को प्राप्त हुआ था ।

[सं. एल-22012/273/1989-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th November, 2012

S.O. 3588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 20-11-2012.

[No. L-22012/273/1989-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/52/2003 Date: 23-10-2012

Petitioner : The Organizing Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh,
(INTUC), Chandrapur, C/o. G.M. Office,
WCL, Chandrapur Area,
Chandrapur- 442401.

Versus

Opposite Parties : The Chairman -cum - Managing Director,
Western Coalfields Limited, Coal Estate,
Civil Lines, Nagpur.

The Chief General Manager,
WCL Chandrapur Area, PO Chandrapur,
Tah. & Distt. Chandrapur.

The General Manager,
WCL Ballapur Area, PO: Ballarpur,
Tah. & Distt. Chandrapur.

The General Manager, WCL Wani,
PO Chandrapur,
Tah. & Distt. Chandrapur.

AWARD

(Dated: 23rd October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their union "Rashtriya Koyla Khadan Mazdoor Sangh" (INTUC), to CGIT-cum-Labour Court, Jabalpur for adjudication as per letter No.L-22012/273/89-IR (C-II) dated 29-2-1990, with the following schedule:—

"Whether the employees of the Area Offices i.e. General Manager, Chandrapur, Wani and Ballarpur Area of M/s. Western Coalfields Ltd. are entitled to get 18 Gazetted holidays and 6½ hours (six and half) working days except the preceding day of rest and payment of arrears of overtime wages to the Drivers and Khalasis w.e.f. 1-1-1983 to 23-11-1988 from the Chairman-cum-Managing Director, WCL Ltd. Nagpur and General Managers of Chandrapur, Wani and Ballarpur Area of WCL. If not, to what relief the concerned workmen are entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Rashtriya Koyla Khadan Mazdoor Sangh" (INTUC), ("the union" in short), filed the statement of claim and the management of WCL, ("opposite parties" in short) filed its written statement.

The case of the union as presented in the statement of claim is that the opposite parties is a company registered under the Companies Act and the opposite parties are the Chairman-cum-Managing Director, WCL, Nagpur, who is responsible for the control and management of the coal mines, sub-Area offices, General Managers', offices and other establishments of WCL and the opposite parties No. 2, 3 and 4 are the Chief General Managers, Chandrapur Area and General Managers Wani and Ballarpur Areas of WCL respectively, who work under and control of the opposite parties and the coal mines, situated in the states of Maharashtra and Madhya Pradesh are controlled and managed by the Chief General Manager and the General Manager as the case may be of their respective Area and at present, there are seven Areas in WCL and scales of pay, allowances and other wages benefits of the non-executive cadre employees of WCL are the same and similar, but as regards the working hours, holidays etc. in the General Manager's offices of different Areas of WCL are different and there is no uniformity in that regard and it (union) has been demanding to bring uniformity in the working hours and holidays in the General Manager's offices of Chandrapur Area, Wani Area and Ballarpur Area of WCL since quite long back and in Nagpur Area, Pathekheda Area and at headquarters office at Nagpur of WCL, eighteen gazetted holidays are being observed in a year and the working hours are six and half hours on all the working days except on the preceding day of rest, which is a half day of working of the said establishments and thus, there are five working days in a week for the said establishments.

The further case of the union is that the non-cooking coalmines were taken over by the Government on 30-1-1973 and the ownerships of the said mines were vested with the Central Government as per the provisions of "Coalmines Nationalisation Act, 1973" and thus, the Central Government became the owner of the non-cooking Coal mines from 1st May, 1973 and Chandrapur Area, Wani Area and Ballarpur Area were earlier managed by one office, namely office of the General Manager, Wardha Valley Area and due to wider developmental activities, the Wardha Valley Area Office was bifurcated in the year 1986 as Chandrapur Area and Wani Area and in 1988, Chandrapur Area was bifurcated into two Area, Chandrapur and Ballarpur Area and it had raised four demands regarding grant of 18 gazetted holidays, 6 ½ hours working days, ½ day of working on the preceding day of rest and payment of arrears of overtime to the drivers/khalasis from 1-1-1983 onwards, while on tour and the demands were discussed at length at different forums of the company and ultimately all the demands were referred for decision at corporate level i.e. WCL headquarters level and inspite of its repeated requests and approaches to give decision at corporate level on the said demands, the management failed to giye the decision and as such, it was left with no other alternative than to serve strike notice on the opposite parties on 27-8-1988 and the conciliation officer seized the matter in conciliation and held conciliation proceeding on 27 dates during the period from 30-8-1988 to 26-9-1989 and during the course of conciliation proceedings held at Nagpur on 24-11-1988, the management agreed to pay Road Mileage to the employees, whenever they go on tour and management also issued circular directing the Area Managements to pay overtime to the driver/khalasis etc. for full overtime working hours beyond their normal working hours and management has been paying overtime to the drivers/khalasi etc. from 24-11-1988 as demanded, but the conciliation ended in failure on 26-8-1989 in respect of the rest three demands, so, the conciliation officer submitted the failure report to the Central Government and the Central Government referred the industrial dispute for adjudication to the Tribunal. It is also pleaded by the union that all the Areas of WCL are under the control and management of Chairman-cum-Managing Director and all the promotions, placements and transfers of the employees are controlled and managed by WCL are vested with the Chairman-cum-Managing Director, Nagpur and the General Manager's offices at Pathakheda, Kanhan, Supervisory Training Institute at Chindwara, HEMM Training Institute at Wardha, Regional Sales Offices at Jaipur, Bombay, Bhubaneswar, Bhopal, Ahemadabad, Madras, Cochin,

Secunderabad were established in between the period from 1974 to 1988 and all the above regional sales offices, Training Institutions and office of the General Manager, Pathakheda Area were granted 18 Gazetted holidays, 6½ working hours for 5 days and ½ day working on the preceding day of rest, but the offices of the Chief General Manager, WCL, Chandrapur Area, the General Manager, WCL Wani Area and the General Manager, WCL, Ballarpur Area are administrative offices and they are not termed as offices of Managers/Agents under Mines Act and as such, they cannot be termed as Mines under the Mines Act and as such, its demand for grant of 18 Gazetted holidays in a year is fully justified, because of the reason that the establishments like Wardha Valley Area office was bifurcated into three offices, namely, Chandrapur Area, Wani Area and Ballarpur Area offices and Management has granted 18 Gazetted holidays, 6 ½ working hours for five days and ½ day working day on the preceding day of rest to other offices of WCL and newly established offices like Training Institutes etc. but refuses to grant the said facilities to Chandrapur, Wani and Ballarpur Area offices and thus, management adopted partial attitude and turned down the genuine demands and there cannot be two sets of rules for different offices in a company and by observing 6 ½ working hours for 5 days and ½ day working on the preceding day of rest, there will not be any major change or loss of working hours in the three offices at Chandrapur, Wani and Ballarpur.

The union has prayed to direct the opposite parties to grant 18 Gazetted holidays in a year, to observe 6½ working hours for 5 days and ½ day working on the preceding day of rest in a week and to pay arrears of overtime from 1-1-1983 to 23-11-1988 to the drivers/khalasi of Chandrapur, Wani and Ballarpur Areas.

3. The opposite parties have pleaded inter-alia that the industrial dispute has arisen as a result of the strike notice dated 27-8-1988 served by Shri G. V. R. Sharma, Organising Secretary, RKKMS, Chandrapur, who is not competent to raise the dispute as there is no RKKMS union, Chandrapur and even if, it is assumed that Chandrapur is a branch union of RKKMS, Nagpur, the branch union, not being a union in the eyes of law, is not competent to serve strike notice upon the employers and to raise the industrial dispute and to their best of knowledge, the RKKMS, Nagpur has a constitution/bye laws containing specific provisions regarding the matter of giving strike notice and the office bearers of the union, who can serve such strike notices and to raise the dispute and to their knowledge, such requirements were not complied with and as Shri Sharma was not competent to serve the strike notice and as the strike notice itself was null and void, the reference made by the Government is also void. The further case of the opposite parties is that all the major trade unions operating in coal industry such as the affiliates of INTUC, AITUC, CITU, HMS and BMS had submitted their charter of demands to the management of at all coal companies with regard to all major issues concerning the service conditions of the workers of coal industry to be taken up for bilateral discussion and decision at the National level before the JBCCI as reconstituted by the Govt. nominating representatives of the managements coal companies and all the unions and these demands amongst others included the issues pertaining to paid festival holidays and the hours of work and the JBCCI had detailed deliberations on all the issues raised by the unions and finally, the agreement, "National Coal Wage Agreement no. IV, ("NCWA-IV" in short) was reached on these issues on 27-7-1989 and with regard to the two major issues i.e. festival holidays and working hours, the provision of NCWA-IV at chapter XII, Para 12.4.1 is relevant, which provides that, "Standardization Committee :—It shall be the duty of this committee to examine the different designations, job discrepancies, disparities In service conditions amongst different section of employees, including hours of work, leave, holidays, categorization of jobs or anomalies as may be referred to the committee." And NCWA -IV was operative from 1-1-1987 to 30-6-1991 and during the operation of the said agreement and in view of the specific provisions contained therein to resolve these issues at National level through the Standarisation Committee, which had already been constituted, the reference of the dispute pertaining to those two issues should be deemed to be invalid and bad in law and as the reference was made by the Government vide their notification dated 22-2-1990 (wrongly mentioned as 22-2-1980 in the written statement), after signing of the NCWA-IV, the reference is repugnant and redundant and hence bad in law and the union has no locus standi to raise these issues as a separate industrial dispute, because RKKMS, which is the main union and the registered body and affiliated to INTUC was a party to the NCWA-IV and on behalf of this union, Shri G.M. Khode, its President was a party to the agreement, so no valid industrial dispute can be contemplated at the instance of Shri G.V.R. Sharma and Shri Sharma has no authority to go against the NCWA-IV and on this ground also, the reference should deemed to be invalid, void and bad in law and paras 12.1.4 and 12.2 of chapter-XII of the said agreement are very relevant in this context and para 12.2 provides that, "During the period of operation of this Agreement, no demand will be made or dispute raised in respect of the matter settled by the agreement." and in view of the said specific provision of NCWA-IV, the union is not competent to raise the dispute in breach of the agreement and to disturb the equilibrium and if at all a reference was contemplated, the same ought to have been referred to a National Tribunal as the workers and managements of the entire coal industry spread over several states are concerned in the alleged dispute and the matter of paid festival/gazette holidays and reduction

in the hours of work, disparities are prevailing not only in WCL, but in other coal companies including ECL, BCCL and SECL as well and these demands have therefore very wide implications affecting the entire coal industry.

The further case of the opposite parties is that NCWA-IV, has been accepted and acted upon and all major issues such as wage structure, allowances, workload, LTC, providing employment to dependents etc have already been implemented and as such, it is not open for the union to isolate and agitate a few of the issues covered by the agreement. It is also pleaded by opposite parties that after nationalization, only one Area i.e. Wardha Valley was created in Chandrapur district of Maharashtra and there was practice of 7 paid festival holidays, which was subsequently raised to 8 days by JBCCI and the existing working hours was in vogue in Wardha Valley Area from the time of nationalization and even prior to that, when the collieries of the Area were under private managements and paid festival holidays were earlier fixed in accordance with L & T—Award and recommendation of the wage board for coal mining industry and the standing orders of the respective collieries and in the matter of working hours of work, Mines Act, 1952 was the governing factor even before nationalization in the collieries/units comprising of Wardha Valley Area and after the nationalization, Wardha Valley Area started functioning in the office of the Hindusthan Lalpeth Colliery, therefore, the holidays and working hours as were being observed in Hindusthan Lalpeth were adopted in the Area Office of Wardha Vallely Area and subsequently, the Wardha Valley Area Office was shifted to Mahakali colliery, where also the same holidays and working hours were observed and later on, Wardha Valley Area was devided into two Areas Viz. Chandrapur and Wani Area and both the Areas are functioning in close proximity at the same location with the reshuffling of the staff between the two Areas and the same practice of holidays and working hours continued in those two Area offices also and Ballarpur Area came into existence in the year 1988, due to bifurcation of Chandrapur Area and before such bifurcation, Ballarpur was a sub-Area and was under Chandrapur Area, where the same holidays and hours of working were prevailing and after bifurcation and shifting of Area office to the old sub Area office of Ballarpur, the same holidays and hours of working were continued and the Model Standing Orders for the coal mining industry and NCWA provide 7/8 days of paid festival holidays and the same cannot be altered and amended, unless the same is done by the JBCCI (Standardisation Committee) or by the Act of Parliament and the union should be stopped from raising an industrial dispute over these Issues, as the principles of estoppels operates in this case.

The further case of the opposite parties is that there are many disparities/restrictive practice in the Coal Mining Industry, which are legacies of the pre-nationalisation era and besides holidays and hours of work disparities, there exist disparities in the matter of house rent allowance, educational allowance, earned leave, sick leave, domestic supply of coal and electricity charges etc and isolating only few of these disparities for finding out a solution on piece meal basis will disturb the present equilibrium and generate a series of industrial disputes making the industry a constant battle field and all the managements and unions of the industry have agreed to resolve such issues through the Standardisation Committee and in order to maintain peaceful industrial relations climate during the interim period, parties have agreed to abide by statusquo and wherever better facilities are prevailing, they have to remain localized and the same cannot be extended to other places and at other places, facilities as available according to the law and NCWA have to continue and the increase in number of holidays and reduction in hours of work will heavily tell upon the finances of the company and acceptance of the demand of the union will upset the manpower position on WCL and management has not enhanced the paid festival holidays from 8 days to 16/18 day of reduced the working hours from 7 hours to 6½ hours in any establishment by ignoring Chandrapur, Wani and Ballarpur Areas and as such, this is not a case of discrimination and management had never offered 12 gazetted holidays before the conciliation officer, rather during the course of casual and informal takes, the union itself had suggested to allow at least 12 gazetted holidays and subsequently back out from the proposal, when management. suggested for implementation of 12 gazetted holidays for the entire company in uniform basis and the disparities are not only localized to WCL, but the same exist in other coal companies, such as SECL, CCL, ECL and BCCL and different gazetted holidays and working hours in a day are being observed in different establishments of the companies, according to historical background and prevailing practices before nationalization and in many matters, the workers and staff working in Chandrapur, Ballarpur and Wani Areas are enjoying better facilities, such as rent free housing accommodation, free electricity and domestic coal which are not available to the staff working at Headquaters establishments and if any parity has to be brought about in respect of the prevailing disparities, the unions and staff must agree to forego some of the benefits, but unfortunately, whenever there was any talk of curtailment of certain benefits, they started arguing that these stand protected under coal Mines Nationalisation Act and NCW agreement and the union's demand will also affect the position in Pench and Kanhan Areas, where 12 paid holidays are being followed and management will have to concede 18 paid holidays for the staff working there also and when there is already a demand before the JBCCI for following 16/18 gazetted holidays and reduction of working hours and working days for all the workers of the Industry, irrespective of their place of work, the demand of the union cannot and should

not be considered and decided in isolation by ignoring the above situation and under the Coal Mines Nationalisation Act, 1973, the concerned workmen are entitled for the benefits and facilities which were being enjoyed by them at the time of Nationalisation and any of the facilities, which they were enjoying prior to Nationalisation has not been curtailed by the management of WCL and above said Act does not stipulate the grant of all the better facilities which were being enjoyed by the workers in other coal Mines and their offices and in view of the same, there is no merit in the demand of the union.

It is also pleaded by the opposite parties that in regard to payment of overtime to the drivers while on tour, there were varying practices in the different coal companies, so with a view to clarify the position and for adoption uniform approach, two circulars were issued by CIL to all its subsidiaries including WCL on 4-3-1985 and 23-12-1985 and the circular dated 23-12-1985 stipulates payment of overtime in terms thereof from the date of its issue and past cases will not be reopened and if any claims are pending, they could be disposed of in the light of the aforesaid circular and overtime was paid to drivers for their actual work in terms of the circular and at the time of issuance of the said circular, no claims of overtime of the drivers were pending at Chandrapur and Wani Areas, which were then in existence and during discussion before the ALC (C), they issued the circular dated 24-11-1988 for paying overtime to drivers went on tour for actual hours of their engagement and the said circular was fully implemented from the date of its issue i.e. 24-11-1988 and none of the demands of the union has merit and the demands are liable to be rejected.

4. In the rejoinder, it is pleaded by the union that the opposite parties did not raise any objection regarding raising of the dispute by the Secretary of the union at the beginning of the conciliation proceedings and as such, the objection raised in the written statement is not maintainable and as the Central Government has referred the instant Industrial dispute after being satisfied about the bonafideness of the claim of the union, the reference is not invalid or void and the opposite parties extended the facility of 18 gazetted holidays, 6½ hours working for five days in a week and ½ working day on the previous day of weekly day of rest to the newly started establishments in breach of NCWAs I, II, III and IV and therefore, the reference made by the Central Government is proper and based on sound footing and on the date of issuance of circular dated 23-12-1983, claims of drivers for overtime were pending with the opposite parties, which were not paid fully and part payment of any claim means balance part payments were pending, which should be paid with arrears to the drivers.

5. Parties did not adduce any oral evidence in support of their respective claims. It is necessary to mention here that though the union had filed the evidence of Shri Dinkar Patruji Singare and Shri Rajgopal Shankar Dhas on affidavit, on 15-9-2011, the union representative filed a pursis stating that union does not want to adduce any oral evidence and as such, the evidence of the two witnesses on affidavit was expunged.

6. At the time of argument, it was submitted by the union representative that the disputes involve in this reference were regarding granting of 18 gazetted holidays in a calendar year, 6½ hours working in the working days except on the preceding day of rest and payment of arrears of overtime wages to the drivers from 1-1-1983 to 23-11-1988 in respect of the employees working in the offices of the General Manager of Chandrapur, Wani and Ballarpur Areas and as during the pendency of the adjudication of the present industrial dispute, the opposite parties have paid the arrears of overtime to the drivers and Khalasi from 1-1-1983 to 23-11-1988, in terms of the administrative circular issued by the Coal India Limited, Kolkata, the reference is to be decided in respect of the rest two demands and the Act provides that an Industrial Dispute can be raised by any office bearer of the union including an Executive Committee member of the union and as such, the preliminary objection raised by the opposite parties in this regard is not maintainable and in all the Areas of WCL, the number of holidays and working hours are not the same and WCL is a "State" under Article 12 of the Constitution of India and the opposite parties in their written statement have pleaded that the issues involved in the reference are to be decided by the JBCCI level or at the Standardisation Committee level, constituted by the JBCCI from time to time, but from the statement furnished by the union, it can be found that opposite parties themselves did not comply the same judiciously and granted higher number of holidays to the newly formed Areas, namely, Umred, Kanhan and Pathakhera Areas and also in respect of the workers Training Institute at Wardha and Supervisory Training Institute, Chhindwara, which were formed or established in 1996, 1975, 1977 and 1988 respectively and except Chandrapur, Wani, Ballarpur, Majri and Wani-North Areas, the employees of other Area offices have been enjoying higher number of holidays in a calendar year and lesser number of working hours and there is no uniformity in granting of holidays and working hours in all the Areas offices of WCL and the facilities of higher number of holidays and lesser working hours were granted to the employees of newly established Areas and establishments without referring and obtaining sanction from the JBCCI or the Standardisation Committee by the WCL and as such, the refusal of opposite parties not in granting 18 gazetted holidays in a year and 6½ hours of working to the employees posted in the offices of the General Managers of Chandrapur, Wani and Ballarpur Area is unreasonable and unconstitutional and as such, the reference is to be answered in favour of the union.

7. Per contra, it was submitted by the learned advocate for the opposite parties that as the status of Shri G. V. R. Sharma has been described as the Organizing Secretary of RKKMS Union, Chandrapur, he had no locus standi to raise the dispute, when the status of the union itself is questionable and as the union has no legal entity within the meaning of the Act, the union was not competent to serve the strike notice and the strike notice being ab-initio void, the reference, made on such void notice is also void and merely because objection was not raised at the conciliation stage, it cannot be held that such objection cannot be raised before the Tribunal and as these are point of law, it can be raised at any stage including adjudication and the ALC and Ministry have no power to decide the legality and otherwise of alleged dispute. It was further argued that JBCCI No. IV was already constituted by the Government of India in which the management of the coal companies and five national level unions were made members and the issues of paid festival holidays and the working hours were already under reference to JBCCI, for National /Industry level bilateral negotiation, for arriving at an uniform decision and as such, the action of the organizing secretary of the branch union to give strike notice was not only uncalled for, but also unauthorized and hence, not tenable in the eyes of law and in the joint note of discussion, between the management and the union dated 1-11-1998, which was duly signed by them and counter signed by the ALC (C), it was categorically and specifically recorded at the last para that the matter was still pending before the JBCCI and when the issues were pending before the JBCCI for consideration, Government should not have referred the matter for adjudication by the Tribunal and as per NCWA-IV, it was decided for continuance of the existing 8 National festival holidays and therefore, the issue of number of holidays stood settled by the agreement and at the relevant time, at Chandrapur, Wani and Ballarpur Area of WCL, the employees were enjoying 8 paid holidays, hence under the terms of agreement, there was no question of conceding the demand of the union and it is not the claim of the union that these establishments, primarily comprising of erstwhile private sector mines, had been getting more than 8 days as holidays and the very fact that the union has raised the demands for enhancement of holidays and reduction of hours of work, goes to prove that these were not available to them during the pre-nationalisation era and when Wardha Valley was bifurcated into Chandrapur, Ballarpur and Wani Areas, the same norms and service conditions including paid holidays and working hours prevailing at Wardha Valley were applied to the newly established Area and therefore, the allegation and basis of claim on the ground of alleged discrimination is not legally tenable and the claim of the union is that as because the management had done wrong by allowing increased holidays and working hours in Pathakhera and Kanhan Areas and other headquarters establishment, they should repeat the same in respect of Chandrapur, Ballarpur and Wani Areas and this amounts to perpetuation of the wrong and the union is not entitled to any wrong.

In support of such contentions, the learned advocate for the opposite parties placed reliance on the decision reported in AIR 2003 SC-3983 (Union of India Vs. International Trading Co.).

8. In view of the submission made by the union representative that during the pendency of the present industrial dispute for adjudication, the arrears of overtime to the drivers and Khalasi from 1-1-1983 to 23-11-1988 has already been paid, in terms of the administrative circular issued by the Coal India Ltd., Kolkata, there is no need to make any order in regard to the said issue.

9. So far the issues regarding granting of 18 days of gazetted holidays, 6½ hours of work on every working day except on the preceding day of rest and ½ day of work on the day preceding the day of rest are concerned, it is to be mentioned that most of the facts pleaded by the parties in those respects are not disputed.

10. The opposite parties did not raise any dispute, when the union representative, Shri Sharma served the notice of strike and the ALC (C) took cognizance of the matter and issued notice to the opposite parties for conciliation. The opposite parties without raising any objection, took part in the conciliation. On submission of failure report by the ALC (C), the Central Government has referred the industrial dispute for adjudication and as such, at present the objection raised by opposite parties regarding the competency of Shri Sharma to give the strike notice and raising the dispute cannot be entertained.

11. The claim of the union is based on the facts that as 18 paid holidays, 6½ hours of work on the working days, except on the preceding day of rest and half day of work on the preceding day of rest are allowed to the employees working is some other Areas and offices of WCL, such facilities are be given to the employees working in the offices of General Managers of Chandrapur, Wani and Ballarpur Areas.

It is not disputed that Wardha Valley Area was bifurcated into Chandrapur and Wani Area in 1986 and in 1988, Chandrapur Area was again bifurcated into Chandrapur and Ballarpur Area. It is also not disputed that in Wardha Valley Area, the facilities of 8 paid holidays per year and 7 hours of work on each working day of the week in vogue, prior to such bifurcation and as such, the same practice was implemented in the newly created Areas of Chandrapur, Wani and Ballarpur. It is also not disputed that the major trade unions operating in Coal industry had submitted their charter of demands including the number of festival holidays and working hours and such issues were considered by the JBCCI and on 27th July, 1989,

NCWA-IV was signed and in NCWA-IV, eight festival holidays was prescribed for the Coal Industry and Chapter XII, para 12.4.1 of NCWA-IV provides that, "Standardisation Committee—It shall be the duty of this committee to examme the different designations, job descriptions, disparities in service conditions amongst different section of employees, including hours of work, leave holidays, categorization of jobs or anomalies as may be referred to the committee." It is not disputed that NCWA-IV was in operation from 1-1-1987 to 30-6-1991 and there was specific provision in the said agreement that during the period of operation of the said agreement these issues are to be resolved at the National level through the Standardisation Committee. The union has admitted such facts in their rejoinder.

However, it is the case of the union that as the opposite parties in breach of such provision, granted better facilities in regard to the number of paid holidays and hours of work to newly established Areas, such as Umrer Area, Kanhan Area and Pathakhera Area and to some new establishments, such facilities are to be given to the employees of Chandrapur Area, Wani Area and Ballarpur Area. However, it is found from the record that the facilities as prevailing in the Areas, from which the new Areas were carved out and in the Areas, where new establishments were established, were extended to the employees of the newly created Areas and establishments and such action of the opposite parties cannot be said to be in breach of the provision of NCWA-IV.

Moreover, it is well settled by the Hon'ble Apex Court in number of decisions that an illegal order did not create any right in favour of others. Apply the said principles to the case in hand, even if, for the sake of argument, it is held that any illegality was committed by opposite parties in granting better facilities to the employees of newly created Areas and establishments; the same did not create any right in favour of the union to claim the facilities for Chandrapur, Ballarpur and Wani Areas.

In View of the provisions of NCWA-IV that during the operation of the said agreement, the issues regarding number of paid holidays and working hours and other issues were to be resolved at the National level through the Standardisation Committee, which had already been constituted and the reference was made by the Central Government on 29-2-90, during the operation of NCWA-IV, the reference is repugnant and redundant and hence bad in law and is not maintainable. Hence, it is ordered:—

ORDER

The reference is answered against the union. The union is not entitled to any relief.

J. P. CHAND, Presiding Officer

4466 GI/12-7

नई दिल्ली, 20 नवम्बर, 2012

का.आ. 3589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पी. जी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 686/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-11-2012 को प्राप्त हुआ था ।

[सं. एल-42012/61/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th November, 2012

S.O. 3589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 686/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of PGI, ICMR/CSIR and their workmen, received by the Central Government on 20-11-2012.

[No. L-42012/61/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A. K. Rastogi, Presiding Officer

Case No.I.D. 686/2005

Registered on 25-8-2005

Shri Lukhwinder Singh
S/o Sh. Surjan Singh
R/o VPO Rurki,
Tehsil and Distt. Fatehgarh Sahib,
Punjab .....Petitioner

Versus

1. The Director, PGI, Sector 12, Chandigarh.

2. The Addl. Prof., Office Incharge,
ICMR/CSIR, Deptt. of Medical Microbiology,
PGIMER, Sector 12,
Chandigarh .....Respondents

Appearances

For the Workman Sh. Manjeet Dhiman Advocate.

For the Management Sh. N. K. Zakhmi Advocate

AWARD

Passed on 6th November, 2012

Central Government vide notification No. L-42012/61/2004 -IR (CM-II) Dated 4-1-2005, by exercising its powers under Section 10 Sub-section (1) Clause (D) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of PGI, Chandigarh in terminating the services of Sh. Lakhwinder Singh, Lab Attendant w.e.f. 31-3-2003 is legal and justified? If not, to what relief the workman is entitled?"

As per claim statement the workman has been appointed as Lab Attendant through Employment Exchange and he had joined the respondent w.e.f. 16-12-1998. He worked continuously uninterruptedly till 31-3-2003 when his services were terminated through an illegal and invalid notice dated 8-3-2003 in violation of Section 25F, 25G and 25H of the Act. While terminating his services juniors were retained and new hands were engaged after his termination. He has requested for his reinstatement with continuity and full back wages.

The claim was contested by the management. It was stated that the workman had been appointed on tenure basis and his appointment terminated on completion of the project on 31-7-2001. Considering his service in the project he was given priority appointment in another new project founded by CSIR, New Delhi. He was freshly appointed on 17-10-2001 purely on tenure basis to the post of Animal Handler on a fixed salary. The workman accepted the post and joined the duty. It was clearly provided in the appointment letter that the services will stand automatically cancelled on termination of the project. The said project terminated on 31-3-2003 and the services of the workman were terminated accordingly. Hence the claim of the workman is not maintainable.

In support of its claim the workman examined himself while on behalf of management Dr. M.R. Shiva Prakash examined himself and filed certain papers.

I have heard the learned counsel for the parties and perused the evidence on record.

In his statement the workman affirmed that he had been engaged under research project by management w.e.f. 16-12-1998 but denied that his services were terminated on 31-7-2001 on the completion of the research period and he was re-engaged in other project where he had submitted any joining report. He however has admitted his signature WW1 on joining report paper No.14 but said that his signatures had been obtained on a blank sheet. I agree with the learned counsel for the management that this part of his statement cannot be believed. It is an afterthought. The joining report is about joining the duty in the project entitled "Evaluation of plant extract from anti-fungal property in experimental animals" w.e.f. 19-10-2001. This joining report supports the plea of the management that the workman had been re-engaged in a new project titled above and he had joined his duties in the new project on 19-10-2001.

The argument of the learned counsel for the workman that this was in continuation of earlier duties of the workman cannot be accepted. It was a fresh appointment and it was this appointment which was terminated on 31-3-2003. The management case is that the termination was as per the terms of the appointment letter dated 17-10-2001 Exhibit MW1/2. The services of the workman were to terminate automatically on the termination of the project and the project terminated on 31-3-2003 and the services of the workman also terminated on 31-3-2003 automatically.

But the appointment letter Exhibit MW1/2 does not support the management. It shows that the appointment was not based on the termination of the project but was up to 31-3-2002. His engagement after 31-3-2002 up to 31-3-2003 was not in terms of the appointment letter.

The management witness has stated in his affidavit that the workman worked up to 31-3-2003 in response to the letter dated 5-3-2003 Annexure M3, from the Section Officer, Human Resource Development Group,CSIR, New Delhi. In his cross-examination he admitted that no separate letter of extension had been given to the workman. It is important to note that document filed along with affidavit as Annexure M3 is not the document referred in the affidavit. It is not a letter dated 5-3-2003 but is letter dated 26-2-2003 and it is regarding "Excess release of grant in the scheme on evaluation..... 'Animals'." Obviously this document is not about the extension of the project. It is clear that the management-respondent filed the papers before the Tribunal with closed eyes and it did not bother about the relevancy of the documents filed by it.

It is thus clear that the workman worked beyond the tenure stipulated in appointment letter Exhibit MWI/2. The question is what is the effect of letting the workman continue to work beyond the stipulated tenure? Can his engagement beyond the period of tenure still be regarded as tenure engagement? In my opinion the engagement beyond the period of tenure cannot be regarded as a tenure engagement. The termination of the services of the workman therefore was neither a result of the non-renewal contract of employment nor it was due to termination of the contract under an stipulation in that behalf contained therein and therefore it is out of the ambit of Section 2 Clause (oo)(bb) of the Act and is therefore 'retrenchment.'

There is no denial that the workman continuously worked for more than one year under the management before the retrenchment. Hence, it was mandatory for the management to fulfill the conditions precedent to retrenchment of workman provided in Section 25F of the Act. It is admitted that as per Section 25F of the Act the workman was given neither the requisite notice nor was

paid the notice pay or the retrenchment compensation. It is the settled law that the retrenchment in violation of Section 25F of the Act is invalid and non-est. The workman is therefore entitled to reinstatement with continuity of service.

There is nothing on record to show that the workman remained unemployed after the termination of his services or was gainfully employed after the termination. But, it may be presumed that during this period he was earning his livelihood. I therefore find him entitled to 50 per cent back wages also besides reinstatement and continuity of service.

The reference is therefore answered in favour of the workman accordingly. The management-respondent is directed to reinstate the workman within one month of receiving the copy of the award. The workman will be paid 50 per cent of the back wages. Let two copies of the award be sent to Central Government and one copy to the District Judge, Chandigarh for information and further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2012

का.आ. 3590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असंसोल के पंचाट (संदर्भ संख्या 07/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-11-2011 को प्राप्त हुआ था ।

[सं. एल-22012/118/2008-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 20th November, 2012

S.O.3590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Bankola Area of M/s. ECL, and their workmen, received by the Central Government on 20-11-2012.

[No. L-22012/118/2008-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 7 of 2009

Parties : The management of Madhaipur Colliery of M/s. ECL, Burdwan

Versus

The General Secy. KMC, Asansol, Burdwan

REPRESENTATIVES:

For the Management : Sh. P. K. Das, Ld. Advocate

For the union (Workman): Sri Rakesh Kunar, Ld. Representative

Industry : Coal State : West Bengal

Dated : 9-10-12

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/118/2008-I.R.(CM-II) dated 12-2-2009 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of M/s. ECL in dismissing Shri Narayan Bouri w.e.f. 30.08.2006 is legal and justified? To what relief is the workman concerned entitled?"

Having received the Order of Letter No.L-22012/118/2008/I.R. (CM-II) dated 12-2-2009 of the above said reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 07 of 2009 was registered on 23-2-09 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rakesh Kumar, Ld. Representative for the workman submits that the case may be closed as the workman Shri Narayan Bouri has already joined in service. Since the workman has already joined in the service and wants to close the case, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असंसोल के पंचाट (संदर्भ संख्या 06/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-22012/543/1995-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 21-11-2012.

[No. L-22012/543/1995-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 6 of 1997

Parties : The management of Chora Colliery of M/s. ECL, Burdwan

Versus

The Vice President, CMU, Ukhra, Burdwan

REPRESENTATIVES:

For the Management : Sh. P. K. Das, Ld. Advocate

For the union (Workman): None

Industry : Coal State : West Bengal

Dated -9-10-12

AWARD

In exercise of powers conferred by clause (d) of Sub- section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/543/95-IR(C-II) dated 24-2-97 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chora Colliery under Kenda Area of M/s. ECL in not protecting the wages of Shri Lakhan Gope, U.G. Loader and 100 other workers (list enclosed) is justified? If not, what relief the workmen are entitled to?"

Having received the Order of Letter No.L-22012/543/1995-IR(C-II) dated 24-2-97 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudicatton of the dispute, a reference case No. 06 of 1997 was registered on 3-3-1997 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman is neither appearing nor taking any step since long. It seems that he has no more interest now to proceed with the case. Since the case is too old and the workman is not at all taking any step since long, it will not be just and proper to keep this old record pending. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असंसोल के पंचाट (संदर्भ संख्या 17/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-22012/514/1994-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/1994) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in retation to

the management of ECL, and their workman, which was received by the Central Government on 21-11-2012.

[No. L-22012/514/1994-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 17 of 1994

Parties : The management of Kumardihi 'A' Colliery of M/s. ECL, Burdwan

Versus

The Working President, CMU, Ukhra, Burdwan

REPRESENTATIVES:

For the Management : Sh. P. K. Das, Ld. Advocate

For the union (Workman): None

Industry : Coal State : West Bengal

Dated 10-10-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/514/94-IR(C-II) dated 13-10-94 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Kumardihi 'A' Colliery, Bankola Area of M/s. Eastern Coalfields Ltd. in dismissing Sh. Mani Shankar Bhandari, Ex-General Mazdoor w.e.f. 26-08-1991 is legal & justified? If not, to what relief is the workman entitled to?"

Having received the Order of Letter No.L-22012/514/94-IR(C-II) dated 13-10-94 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 17 of 1994 was registered on 26-10-94 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. On perusal of the case record, I find that the Union/workmen neither appearing nor taking any step since long despite registered notices. Since, the case is too old and the workmen are showing no interest to proceed with the case, I find no reason to continue the case. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute"existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असंसोल के पंचाट (संदर्भ संख्या 54/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-22012/97/1995-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL, and their workman, which was received by the Central Government on 21-11-2012.

[No. L-22012/97/1995-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 54 of 1995

Parties : The management of shankarpur O.C.P. of M/s. ECL, Burdwan

Versus

The Joint General Secy., CMU, Ukhra, Burdwan

REPRESENTATIVES:

For the Management : Sh. P. K. Das, Ld. Advocate

For the union (Workman): None

Industry : Coal State : West Bengal

Dated 09-10-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/97/95-1R(C-II) dated 27-09-95 has been pleased to refer the following dispute for adjudication by this. Tribunal.

SCHEDULE

"Whether the action of the management in not placing in Technical & Supervisory Gr. B to Sh. Tapan Chakraborty and two others of Shankarpur O.C.P. under Bankola Area of M/s. EC Ltd. w.e.f. 15-12-93 is justified or not? If not, what relief the workman is entitled to?"

Having received the Order of Letter No.L-22012/97/95/I.R.(C-II) dated 27-09-95 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 54 of 1995 was registered on 5-10-95 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

The workman is neither appearing nor taking any step since 2002. It seems that he has no more interest now to proceed with the case. Since the case is too old and the workman is not at all taking any step since long to contest the case, I find no reason to continue this old case. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असंसोल के पंचाट (संदर्भ संख्या 29/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2011 को प्राप्त हुआ था ।

[सं. एल-22012/84/1993-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL, and their workman, which was received by the Central Government on 21-11-2012.

[No. L-22012/84/1993-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : SRI JAYANTA KUMAR SEN, Presiding Officer

Reference No. 29 of 1993

Parties : The management of Damagoria Colliery of M/s. BCCL, Burdwan

Versus

The Jt. Secy., JCMC, Asansol, Burdwan

Representatives :

For the Management : Sh. P. K. Das, Ld. Advocate

For the union (Workman) : None

Industry : Coal State : West Bengal

Dated 9-10-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/84/93-I.R.(C-II) dated 17-6-93 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Damagoria Colliery in not promoting Shri R.S. Pandey, Ram Ajodaya Singh, Nayab Singh and Kebal Singh in Excv. Gr. 'A' having seniority and experience than Shri H.N. Huda is justified? If not, to what relief the concerned workmen are entitled to?"

Having received the Order of Letter No.L-22012/84/93-I.R.(C-II) dated 17-06-93 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 29 of 1993 was registered on 22-6-93 and accordingly an order

to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, I find that the Union/ workmen neither appearing nor taking any step since long despite registered notices. Since, the case is too old and the workmen are showing no interest to proceed with the case, I find no reason to continue the case. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिवीजिनल इन्जीनियर, आप्टीकल फाइवर डिवीजन भोपाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर, के पंचाट (संदर्भ सं. सी.जी.आई.टी./एल.सी./आर. /150/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-40012/96/2002-आई आर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/ LC/R/150/02) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the Divisional Engineer, Optical Fibre Division, Bhopal and their workman, which was received by the Central Government on 12-11-2012.

[No. L-40012/96/2002-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/150/02

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri Ram Singh,
S/o Shri Meharban Singh,
R/o Gurwar KPO Bawsar,
Jagir, Tehsil Ishagarh,
Guna ...Workman

Versus

The, Divisional Engineer,
Optical Fibre Division,
Hoshangabad Road,
Bhopal (MP) ...Management

AWARD

Passed on this 15th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-40012/96/2002-IR(DU) dated 8-10-2002 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Ram Singh S/o Shri Meharban Singh w.e.f. 22-6-89 is justified? If not, to what relief the workman is entitled for?"

2. The case of the workman Shri Ram Singh, in short, is that he was appointed from 1-8-1987 and was engaged on daily rate basis in Shivpuri Gwalior and Guna-Shivpur laying section of telecommunication department in Coaxial Cable Project.He was issued identity card. He worked continuously till 22-6-89 when he was terminated orally by the Junior Engineer without payment of retrenchment compensation. It is stated that the termination is void ab-initio and is contrary to the Section 25 F of the Industrial Dispute Act, 1947 Act, (in short the Act, 1947). After his termination, the management engaged new hands. It is submitted that the workman be reinstated with back wages.

3. The management did not appear inspite of notice and therefore the then Tribunal proceeded exparte against the management on 9-6-09.

4. The following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of Shri Ram Singh w.e.f. 22-6-89 is justified?

II. To what relief the workman is entitled?

5. Issue No. 1

The workman Shri Ram Singh is examined in the case. He has supported his case. He has stated in his evidence that he was engaged on daily rated basis on 1-8-1987 and worked till 22-6-1989 when his service was terminated without retrenchment compensation. He has

stated that identity card was issued. He has further stated that he worked 240 days in a single calendar year preceding the date of termination. His evidence shows that his service was continuous service for a period of one year during twelve calendar months preceding the date of termination as required under Section 25(B)(2) of the Act, 1947. This shows that there is violation of the provision of Section 25-F of the Act, 1947. His evidence is unrebutted. There is no reason to disbelieve his evidence.

6. The workman has filed copies of the identity cards. His cards clearly shows that he was engaged more than 240 days in a year and specially during twelve calendar months preceding the date of termination as required in Section 25B(2) of the Act, 1947. This shows that without compliance of the provision of Section 25 F of the Act, 1947 his termination is not justified. This issue is decided in favour of the workman and against the management.

7. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management is not justified without complying the provision of Section 25 F of the Act, 1947. The management is, therefore directed to reinstate the workman with back wages. The reference is, accordingly, answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिस्ट्रिक्ट इन्जीनियर, टेलीकाम, सागर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ सं. सी.जी.आई.टी./एल.सी./आर. /162/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था।

[सं. एल-40012/197/2001-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/162/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the District Engineer, Telecom, Sagar and their workman, which was received by the Central Government on 12-11-2012.

[No. L-40012/197/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/162/2001

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri Lachhiprasad Yadav,
S/o Shri Ghamanprasad Yadav,
Vill Ladamgunj,
Balakote Road,
Damoh ... Workman

Versus

The District Engineer,
Telecom,
Sagar (MP)

Sub Divisional Officer,
Taar, Damoh (MP) .....Management

AWARD

Passed on this 16th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-40012/197/2001-IR(DU) dated 17-10-2001 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of Telecom District Engineer, Sagar and Sub Divisional Officer (Taar), Damoh (MP) in terminating the services of Shri Lachhiprasad Yadav S/o Shri Ghumanprasad Yadav w.e.f. 22-03-98 is just and Proper? If not, to what relief the workman is entitled?"

2 . The case of the workman, in short is that Shri Lachhi Prasad Yadav was working as daily wages employee in the department of Telecom at Damoh from 9-2-88 to 23-3-98 continuously. During the period of 5-2-97 to 22-3-98 he worked as Driver of the department. He was issued identity card by the department. The SDO, Telecom also issued a certificate regarding his character and work. It is stated that the jeep bearing No. MP.15-4537 met with an accident on 23-3-98 and he was injured in the jeep and a case was also lodged. Thereafter the management dismissed him from the services w.e.f 22-3-98 by oral order without giving any opportunity of hearing. He is unemployed after dismissal from the services. It is submitted that the management be directed to reinstate him with full back wages.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, interalia, is that the workman worked from 1988 to 1998 intermittently for specific work and wages. He served as a driver on two occasions, i.e. 8-5-97 to

5-6-97 and on 22-3-98 for total 25 days. It is stated that as per annexure R- I he worked in the year 1988 for 12 days, in 1989 for 126 days, 1990 for 78 days in 1991 for 36 days, in 1993 for 130 days, 1994 for 135 days, in 1995 for 157 days, in 1997 for 29 days and in 1998 for one day only. The documents also makes it clear that he had not worked 240 days in a calendar year from 9-2-88 to 23-3-1998. The provision of section 2(oo)(bb) of the Industrial dispute Act, 1947 (in short the Act, 1947) is attracted in the case. The other provision of the Act, 1947 is not applicable in the case. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of parties, the following issues are settled for decision—

I. Whether the action of the management in terminating the services of Shri Lachhi Prasad Yadav w.e.f. 22-3-98 is justified?

II. To what relief the workman is entitled?

5. Issue No. I

To prove the case, the workman has adduced his evidence. He has supported his case. He has stated that he worked as daily wages employee from 9-2-1988 to 23-3-98 and during the said period from 5-2-97 to 22-3-98 he worked as Driver.He has stated that he worked continuously and on 23-3-98, he met with an accident along with jeep. In cross-examination, he has stated that he was orally appointed as daily wages employee. He has stated that he has not remembered as to how many days he worked each year from 1988 to 1998.

6. The workman has also filed documents in the case. The management has admitted those documents which are marked as Exhibit W/1 to Exhibit W/26. These documents have given different picture. It shows that he worked intermittently and had not worked 240 days in any calendar year. Exhibit W/1 to W/18 are the photocopies of the working expenses bills from 1989 to 1990. These bills show that the wages of the workman Shri L.P. Yadav was also paid but it appears that he had worked intermittently as the periods given by the management in the pleading. Exhibit W/1 is of the payment of 12 days wages of Rs.144 of the workman in the month of January 1989. Similarly Exhibit W/2 is the payment of 12 days of Rs.144 in Feb1989. Exhibit W/3 of Rs.144 in March 1989, Exhibit M/4 of Rs. 144 of May 1989, Exhibit M/5 of Rs.144 of July 1989, Exhibit M/6 another bill of Rs.144 of July 1989, Exhibit M/ 7 of Rs.72 of June 1989 and so on. These working expenses bills clearly show that the workman had not worked 240 days in any calendar year. It is clear that the documents have not corroborated the oral evidence of the workman that he worked continuously rather the evidence proves that the workman has not worked continuously for a period of one year in any calendar year. Exhibit W/19 to Exhibit W/22 are the bills of the labours who did maintenance work during the period from August 1991 to Nov-1991. It appears that the workman had not worked continuously in any month. This shows that the workman has not come with fair case in the Court. The days appear to have worked in view of the documents corroborates the case of the management that he never worked 240 days in a calendar year.

7. Exhibit W/23 is the certificate dated 16-7-98 . This is filed to show that Shri Lachhi Prasad Yadav has worked as casual Driver. This fact is not denied by the management. This certificate doesnot show that how many days the workman had worked as casual driver. It further shows that he worked as and when regular driver was not available. This itself shows that he worked intermittently and not continuously as has been claimed by the workman. The management alleges that he worked as casual driver from 8-5-97 to 5-6-97 and on 22-3-98 when it is not established that he worked continuously then the story of the management is to be accepted. This shows that the workman shall not be deemed to be in continuous service for a period of one year in twelve calendar months preceding the date of termination as required under Section 25(B)(2) of the Act, 1947. Thus the provision of Section 25-F of the Act is not attracted. Exhibit W/24 is the FIR. This is filed to show that the jeep met with an accident on 23-3-98 and he was on the said jeep. This fact is admitted by the management. Thus the documentary evidence of the workman shows that the action of the management was justified as the provision of Section 25-F of the Act, 1947 was not violated.

8. On the other hand, the management has examined Shri N.C.Raj, district Engineer, BSNL Damoh. He has supported the case of the management. He has stated that he was never worked as casual labour continuously though he worked intermittently. He had never worked 240 days in a calendar year. His evidence also shows that the workman had not worked 240 days in twelve calendar months prior to the date of termination to attract the provision of section 25-F of the Act, 1947. This issue is decided against the workman and in favour of the management.

9,. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management is justified and the workman is not entitled to any relief. The reference is accordingly answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

4466 GI/12-9

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फ्लैग आफीसर, कमानडिंग-इन-चीफ (वैस्टर्न नेवल कमाण्ड) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई नं. 2, के पंचाट (संदर्भ संख्या सी जी आई टी 2/14 व 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-14011/05/2006-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/14 of 2010) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the Flag Officer Commanding-in-chief (Western Naval Command), and their workman, which was received by the Central Government on 12-11-2012.

[No. L-14011/05/2006-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/14 of 2010

Employers in Relation to the Management of Western Naval Command

The Flag Officer Commanding in Chief, Head quarters Western Naval Command
Shahid Bhagat Singh Road
Mumbai-400 001

AND

Their Workmen

The General Secretary
Indian Naval Employees Union
12/14, Rajgir Chambers
R. No. 60, 7th floor
Shahid Bhagat Singh Road
Opp Old Custom House
Mumbai -400 023

Appearances :

For the Employer : Mr. N.J. Gonsalves, Advocate

For the Workmen : Mr. J.H. Sawant, Advocate

Mumbai, dated the 13th August, 2012

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-14011/5/2006-IR (DU), dated 28-9-2006/14-1-2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of the Indian Naval Employees Union, Mumbai for regularization of 23 female rice cleaners as per Annexure by the management Western Naval Command Headquarters, Mumbai is just and legal? If so to what relief the workmen are entitled to and from which date?"

Name of the rice cleaners as per Annexure

1.	Smt. Ishwarmma Venktesh
2.	Smt. Jaydi Babu Shaikh
3.	Smt. Shobha H. Sandyalu
4.	Smt. Sanamma Kawaldar
5.	Smt. Rafia G. Shaikh
6.	Smt. Subhangi M. Pawar
7.	Smt. Manda Devalkar
8.	Smt. Basamma K. Padekar
9.	Smt. Eramma D. Walmiki
10.	Smt.Rukmini K. Boyan
11.	Smt. Bharati G. Poste
12.	Smt.Shalan S. Jawale
13.	Smt. Anju S. Wadari
14.	Smt.Sumitra V. Gadkar
15.	Smt. Nirmala D. Malesh
16.	Smt.Rupali D. Mahadeshwar
17.	Smt. Vasanti K. Valmik
18.	Smt. Manjula
19.	Smt. Rekha More
20.	Smt. Hariyali Devi
21.	Smt.Vilma D. Souza
22.	Smt.Lata Devi
23.	Smt.Leela Solanki

2. After receipt of the reference in response to the notices, both the parties appeared through their representatives. The second party union filed its statement of claim at Ext.3. According to them, the Ministry of Defence, Government of India has given sanction to

engage female rice cleaners for cleaning rice supplied to the Sailors and Officers of Indian Navy. Each female rice cleaner is required to clean minimum 50 Kgs. of rice per day. The work of rice cleaning is continuous process through out a year. However the local administration of Navy ensures that female rice cleaners do not get average work more than 240 days a year so that they do not get protection of labour law to make them regular. For that purpose they are engaging extra female rice cleaners. The management neither issues any appointment letter nor gives any attendance card or photo pass. Pay slip is also not issued so as to get any documentary proof. Navy do not have recruitment and promotion rules for rice cleaners. Hence the female rice cleaners were engaged without following any procedure.

3. Govt. of India, Department of Personnel and Training (DOPT) issued official memorandum dated 8-4-1991 stating that casual workers engaged before 7-6-1988 and are in service may be considered for regular appointment to group 'D' post even if they are recruited otherwise than through employment exchange and had crossed the upper age limit prescribed for the post, provided they were otherwise eligible for regular appointment in all other respects. Citing this memorandum union took up the point of regularization of the female rice cleaners with the Hd. Quaters Western Naval Command and succeeded in getting all those female rice cleaners appointed upto 7-6-1988 in various units of Navy to the post of unskilled labourers. Thereafter new rice cleaners were appointed as casual workers. After few years they also started requesting through union for their regularization. Union has taken up the matter with Defence Ministry through Naval Head Head Quarters suggesting to sanction some posts of rice cleaners. However it was not agreed and the Military of Defence suggested to surrencer Group 'D' posts in lieu. Since Navy had to surrender 10 posts of employees to lift the ban on recruitment of Group C and Group D posts there is shortage of workers all over Western Naval Command and surrendering some posts for regularization of rice cleaners was not agreed by the Navy.

4. In February 2002 Union approached to RLC (C) Mumbai and pointed out unfair labour practice of purposely giving less number of days work to female rice cleaners despite having sufficient workload. After series of discussions the matter was referred to Government of India, Ministry of Labour by the RLC (C). Ministry of Labour rejected the request on technical grounds that the female rice cleaners had not completed 240 days in a calendar year. The union also could not get relief from Hon'ble High Court. With passage of time it was revealed that since last few years most of the female rice cleaners have worked for more than 240 days in a calendar year. It was brought to the notice of Head Quarters, Western Naval Command with a request to regularize them. But they gave evasive reply. Thus matter was taken up to RLC (C). In the conciliation proceeding the dispute could not be resolved immediately and conciliation Officer submitted his report of failure to the Ministry of Labour and the Labour Ministry has sent the reference to this Tribunal. These female rice cleaners can be distinctly distinguished from the other casual workers. They are working continuously and their work is of continuous nature. They are not appointed for a fixed tenure. Most of them are working continuously since 1988.

5. The Western Naval Command Head Quarters has accepted that only 23 rice cleaners have completed more than 240 days in a calendar year. However in relity they are more than 23 rice cleaners who have completed 240 days in a calendar year of 12 months. These female rice cleaners employed at various units at Western Navay Command, Mumbai are entitled to get regularized from the date of their initial appointment. The union therefore prays that the Hq. Quarter Western Naval Command, Mumabi be directed to regularize all female rice cleaners who have completed 240 days in a period of 12 months from the date of their initial appointment.

6. The first party resisted the statement of claim vide their written statement at Ex-4. According to them, the second party workmen are not in service of Central Government. Therefore they cannot be member of the union and they cannot claim regularization as prayed for. According to them as per the President's sanction they are engaging women casual rice cleaners, at a prevailing 'nerrick rate of pay' at the station on an 'as required' basis. Such labourers used to clean 50 Kgs. of rice per day. Cleaning of rice is not done as a matter of right but only when excessive foreign matters like qrit etc are found mixed with rice or when climatic conditions like humidity render the rice liable to infestation. The expenditure involved is debitable to major head 270 in sub head 6 of Defence Service Estimate etc. The labourers are being engaged purely on casual basis and they are not entitled to be regularised.

7. The policy regarding engagement and remuneration of casual workers in Central Government has been reviewed from time to time by the Govt. of India and guidelines were issued to various departments in this respect. Ministry of Personnel/Public Grievances and Pensions (Department of PF Personnel & Training) issued memorandum dt. 8-4-1991 and conveyed that as per the request received from various Ministries and Departments for allowing relaxation and conditions for upper age limit and sponsorship through Employment Exchange for regularization of such casual employess against Gr. D post who were recruited prior to 7-6-1988. It has been decided as a one time measure in consultation with the Director General of Employment and Training, Ministry of Labour that casual workers recruited before 7-6-1988 who were on

service on the date of issue of instruction may be considered for regular appointment to Gr. 'D' post even if they were recruited otherwise than through Employment Exchange and had crossed the upper age limit prescribed for the post provided they are otherwise eligible for regular appointment in all other respects. There after naval HQ by its letter dt. 18-7-1991 conveyed to the opposite party that rice cleaners employed on casual basis and who are eligible in terms of the said instructions can be regularized against Group D posts of unskilled labourers provided regular vacancies are available and the individuals concerned are otherwise eligible. In pursuance thereto the services of 17 eligible casual rice cleaners were regularized at Mumbai as unskilled labourers w.e.f. 13-8-1994 in the then existing vacancies. In respect of the other casual rice cleaners the Department of Personnel and Training instructed that in future such regularization would violate the laid down norms, rules and procedure for recruitment of Government servants and pave way for back door entry in Government services by passing the relevant rules and procedure. The first party has also made proposal, efforts for getting sanction for specific post of rice cleaners. However Ministry of Defence, did not agree for creation of new posts and instead suggested to surrender Group D posts against which rice cleaners can be absorbed.

8. According to them there is no vacancy or permanent post of rice cleaners in the Department. On the contrary there is an overall shortage of Group D posts in the first party. In the circumstances it is not possible to absorb any of the rice cleaners or regularized them against Group D post. They denied all the allegations in the statement of claim. According to them they engage women casual rice cleaners from time to time and they were duly paid their emoluments and other benefits in accordance with the guidelines and question of any unfair labour practice does not arise. According to them mere completion of 240 days in a period of 12 months by few casual labourer is not the only criterion for their regularization or absorption in permanent posts. As there are no permanent posts or vacancies for rice cleaners in the department, these casual rice cleaners cannot be absorbed or regularized in the Government service. It would be vicious circle if the casual rice cleaners are made to be absorbed or regularized in permanent posts which in fact are not in existence. It amount to back door entry in Government services. There is no merit in the claim therefore it is prayed that the reference be rejected.

9. By way of rejoinder Ex-7 the second party union has denied the averments in the written statement and reiterated the contents in their statement of claim Ex-3.

10. My ld. Predecessor has framed following issues at Ex.14 for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether workmen involved in the reference qualify the test of working of 240 days with first party to claim permanency ?	Yes
2.	Whether union further proves workmen involved in the reference are doing perennial work of the first party without which first party cannot run ?	Yes
3.	Whether second party union prove that employees involved in the reference are entitled for the reliefs of regularization in the establishment of the first party ?	Yes
4.	What order ?	As per final order.

REASONS

Issue No. 1

11. It is the case second party union that workmen under reference are working for number of years and they have completed 240 days continuous work in a calendar year. This version of the workmen is not denied in toto in the written statement Ex-4. On the other hand it is contended in the written statement that mere completion of 240 days work in 12 months is not sufficient to consider a workman for regularization. In short the averment that the workmen under reference have completed 240 days continuous work in a calendar year is not specifically denied in the written statement. Therefore as per Order VIII R 5 Code of Civil Procedure it amount to admission. In this backdrop no further discussion is necessary to arrive me at the conclusion that the workmen under reference have completed 240 days continuous work in a calendar year. Accordingly I decide this issue no. 1 in the affirmative.

Issue No. 2

12. According to the second party the work of rice cleaning is continuous and the same is of perennial nature. As against this it is contended on behalf of the first party that, the women employed for cleaning rice are mere casual workers. In their written statement Ex-4 they have not specifically denied that the work of rice cleaning is perennial in nature. On the other hand the first party has also admitted that such casual rice cleaners are being engaged for cleaning the rice since 1984 and some of them are working since 1988. Though in the cross-examination it was suggested that, at present they get cleaned rice and needs no cleaning. The reference is not in respect of present situation. It is in respect of the period

when workers under reference had worked and when the work of cleaning the rice,was no doubt of perennial nature. The said contendion is also not denied specifically in the written statement Ex-4. Furthermore in the later record at Ex-23 the Lt. Commander has written to the Flag Officer Commanding-In-Chief, Western Naval Command that, work of rice cleaning is a continuous process and he has requested to create post of rice cleaners. It also supports the version of the second party that work of rice cleaning is of permanent nature. As a result I hold that the workman under reference are doing the work of perennial nature. Accordingly I decide this issue no. 2 also in the affirmative.

Issue No. 3

13. In respect of regularization or absorption in the service it was argued on behalf of the first party that, merely working for 240 days in a calendar year is not sufficient to absorb a casual worker in the service of the department. The Ld. adv. submitted that these casual labourers have neither come through employment exchange nor have complied with the recruitment norms. He also pointed out that there are no vacancies in the department. In the circumstances ld. adv. submitted that their services cannot be regularised merely as they have worked more than 240 days in a calendar year. According to him, it amounts to backdoor entry which is not allowed. In support of his argument the Ld. adv. resorted to the Apex Court ruling in Secretary, State of Karnataka V/s. Uma Devi 2006 II CLR 261 SC wherein on the point Hon'ble Apex Court observed that,

> "Though this act may not oblige an employer to employ only those persons who have been sponsored by Employment Exchanges, it places and obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies based on a procedure. Normally statutory rules are framed under the authority of law governing employment. It is recognized that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because following any other course could be disastrous in as much as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore when statutory rules are framed under Article 309 of the Constitution which is exhaustive, the only fair means to adopt is to make appointments based on the rules so framed."

In that case the question of regularization of daily wagers in the Government Service was before the Hon'ble Court. On the point Hon'ble Court further observed that;

> "In view of our conclusion on the question referred to, no relief can be granted, that-to to an indeterminate number of members of the Association. These appointments or engagements were also made in the teeth of directions of Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granding of the relief claimed would mean paying a premium for defence and in subordination by those concerned who engaged these persons against the interdict in that behalf."

14. In the light of this judgment the ld. adv. submitted that the workmen under reference cannot be regularised in the service merely as they are working for number of years and as they have completed more than 240 days in a calendar year.

15. In this respect the ld. adv. for the second party submitted that facts in the case at hand are all together different. In the case at hand the union has alleged that the management herein is doing unfair labour practice by employing these workman on casual basis and not confirming them in the permanent service and are paying meager amount of wages. They are deprived of getting the benefit as like permanent employees. The ld. adv. further submitted that, on repeated representations submitted by these workmen, Government has issued circular and relaxed the conditions of recruitment in respect of these workmen. He further pointed out that admittedly some of the workmen were regularised in the service. However the management has refused to regularise the services of the other female rice cleaners who are working for number of years and have completed more than 240 days. The ld. adv. pointed out that the point of unfair labour practice was not involved in the above referred Apex Court ruling. On the other hand he pointed out that in a recent ruling, Hon'ble Apex Court has Court has distinguished the ruling of Uma Devi in Maharashtra State Road Transport Corporation & Anr. V/s. Castaribe Rajya P. Karmachari Sanghatana 2009 III CLR 262. In that case the affected employees were engaged by the Corporation as Casual labourers for cleaning the buses. They were required to work everyday for 8 hours. They did the work of permanent nature for paltry amount and the posts are available in the depot. They filed a complaint and alleged unfair labour practice and sought directions to cease from unfair labour practice and to give to the affected employees status, wages and all other benefits of permanency applicable to the post of cleaners. The Industrial Court directed to pay equal wages to the concerned employees which were paid to the permanent workers. In writ Petition Hon'ble single judge directed to give benefit of permanency to the affected employees

including salary and allowances. Writ appeal there-against was dismissed. The matter was taken up before Apex Court and the argument was advanced that the orders of the Industrial Court and Hon'ble High Court are not maintainable in view of the decision of Apex Court in the case of Uma Devi and Standing Order 503. The Apex Court rejected the contention and while dismissing the appeal observed that :

> "As a matter of fact the issue like the present one pertaining to unfair labour practice was not at all referred/considered or decided in Uma Devi. Unfair labour practice on the part of employer in engaging employees as badlies, casuals, or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Court under Section 30 of the Act did not fall for adjudication or consideration before the constitutional bench. Uma Devi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Uma Devi connot be held to be overridden the power of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of employer under item 6 of Schedule IV is established."

16. In this respect I would further like to point out that, some of these rice cleaners are absorbed and regularised in Group-D. There is no obstacle in absorbing and regularizing the other female rice cleaners in Group-D. As per the above ruling, engaging workers to do a particular work for years together for meager wages amount to exploitation. Only the poor, oppressed and persons below poverty line can work for number of years for meager wages. The workers herein are all female rice cleaners. They are being exploited since last number of years. Therefore Government has also relaxed the recruitment conditions in respect of these workers. Such exploitation needs to be stopped. In the circumstances and in the light of the recent Apex Court ruling I hold that these casual rice cleaners who have completed 240 days in a calendar year are entitled to be reguarised in service as like the other rice cleaners who were absorbed in the service. Accordingly I decide this issue no. 3 in the affirmative and proceed to pass the following order:

ORDER

Reference is allowed as follows :

The first party management is directed to absorb and regularise the services of these 23 female rice cleaners under reference in Group 'D' from the date of completion of their 240 days work in a calendar year respectively. The first party is also directed to pay the arrears of wages and other allowances as admissible to the regular workers within one month from the date of receipt of copy of the award.

Dated: 13-8-2012

K.B. KATAKE, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रिसर्च एण्ड अस्सिमेंट सैन्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली नं. 1 के पंचाट (संदर्भ संख्या 188/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-42012/50/1998-आई आर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 188/2011) of the Central Government Industrial Tribunal No.1, New Dehli as shown in the Annexure in the Industrial Dispute between the M/s. Research and Assessment Centre and their workman, which was received by the Central Government on 12-11-2012.

[No. L-42012/50/1998-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 188/2011

The General Secretary,
Delhi Karamchari Sangh,
D-60 (576), Chanderlok,
Gali No. 8, Durga Puri,
Shahadra, Delhi- 110032

....Claimants Union

Versus

M/s. Research & Assessment Centre,
R.A.C. Building, Lucknow Road,
Timarpur, New Delhi

.....Management

AWARD

Research and Assessment Centre (hereinafter referred as the Centre), located at Lucknow Road, Delhi, is engaged in recruitment/assessment of scientists at all levels. The Centre assigned its watch and ward services to M/s. Rishi Raj Management Services (hereinafter referred to as the contractor). The contractor engaged Shri Amar Nath Shukla to work as security guard at the gate of the Centre. Services of Shri Amar Nath Shukla were dispensed with by the contractor. Shri Amar Nath Shukla raised a demand for reinstatement of his services with the Centre, which demand was not conceded to. Thereafter he raised an industrial dispute before the Conciliation Officer. Since the dispute was contested by the Centre, hence conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42012/50/98-IR(DU), New Delhi, dated 7-9-1998, with following terms:

> "Whether the action of the management of M/s. Research and Assessment Centre, New Delhi in terminating the services of Shri Amar Nath Shukla, Security Guard is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. Claim statement was filed by Shri Amar Nath Shukla pleading therein that he was employed by the Centre as security guard in June 1993. He worked honestly and diligently and gave no chance of complaint to his superiors. All of a sudden, his services were terminated by the Centre on 4-10-1997, without making payment of his wages for September' 97. No opportunity was given to him to defend himself. No notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid to him. The order terminating his services is illegal. He claims that Centre may be directed to rainstate him in service with continuity and full back wages.

3. Claim was demurred by the Centre pleading that there existed no relationship of employer and employee between the parties. Claimant was never engaged by the Centre. He was an employee of M/s. Rishi Raj Management Services, to whom contract to carry out watch and ward services the awarded. The contractor terminated services of the claimant. There was no occasion for the Centre to give him notice or pay in lieu thereof and retrenchment compensation. The Centre further pleads that it is not an industry under the provisions of Industrial Disputes Act, 1947. The claimant is not entitled to any relief. His claim petition may be dismissed, pleads the Centre.

4. Claimant entered the witness box to establish his claim. Shri H.N. Shukla was also examined by him. Shri Krishan Kumar, Joint Director, unfolded facts on behalf of the Centre. No other witness was examined by either of the parties.

5. Vide order No. Z-22019/6/2007-IR(C-II) New Delhi, dated 11-2-2008, appropriate Government transferred the case to Central Government Industrial Tribunal No. II, New Delhi, for adjudication. It was retransferred to this Tribunal vide order No. Z-20019/6/2007-IR(C-II), New Delhi, dated 30-3-2011, for adjudication.

6. Arguments were heard at the bar. Shri R.K. Srivastava, authorized representative, advanced arguments on behalf of the claimant. Shri Alok Bhasin, authorized representative, presented facts on behalf of the Centre. Written submissions were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

7. At the outset, it was claimed on behalf of the Centre that it is not an industry. Hence this Tribunal has no jurisdiction to entertain the dispute for adjudication. Contra to it, Shri Srivastava presents that the Centre is an industry, since it satisfies the triple test laid down by the Apex Court in Bangalore Water Supply and sewerage Board [1978 (2) SSC 213]. For an answer to the proposition raised, it would be expedient to construe definition of the term 'industry' defined in Section 2(j) of the Industrial Disputes Act, 1947 (in short the Act). For convenience, the said definition is extracted thus :

> "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

8. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined in from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry,whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., busness, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this party of the definition any calling, employment, handicraft, industrial, occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

9. Gloss was put on the definiation of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evole test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of Section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S. 2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import:—

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Athough Section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkagae as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1(supra), athough not trade or business, may still be 'industry' provided the nature of activity, viz the employer-employee basis,bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures," analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds,cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more:—

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra),cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs,co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraia or like return, manily drawan by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites woking at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clause, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2 (j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the all categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C. 1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C. 1873), Dhanraj Giriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

10. Principles laid down in Bangalore Water Supply & Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The Centre agitates that it is not an industry. The view point held by the Centre is that no profit motive activities are being carried on by it. No business is being run, hence the Centre cannot be termed as an "industry". Except the facts referred above, the Centre nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'. Contra to it the claimant agitates that the Centre is an 'industry'.

11. In Ahmedabad Textile Industry's Research Association [1960 (2) LLJ 720] the association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were "material services' to the textile industry hence the association answered the definition of industry. But in Safdarjung Hospital case (supra) was held to be an industry because it was a non-profit making body and its work was in the nature of training, research and statement. In Indian Standard Institute [1966 (1)LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

12. One may project that the Centre carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of work "industry"? Regal powers of the State has acquired a definit connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that is could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be proporly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumberated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is: if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemtion, not the welfare activities or

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economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within Section 2(j)". In chief conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function. there may be an inner circle encompassing some units which could be considered as"industry", if substantially severable".

13. In Physical Research Laboratory [1997 (2) LLJ] Apex Court held that the Physical Research Laboratory is not an "industry" because it is not engaged in an activity which can be called businees, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industry activity and cannot be described as an economic venture or commercial enterpise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering and services to others. It is engaged in pure research in space science.

14. While reaching the conclusion, referred above, the Apex Court relief observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be plate for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intengible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the word vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which founded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

15. Now, I would turn to facts of the present controversy. In written statement, the Centre nowhere mentions the activities being carried on by it. In his affidavit Ex.MW1/A, tendered as evidence; Shri Krishan Kumar simply details that provisions of the Act are not applicable to the Centre since it is not an industry. Annexure I of Ex.MW1/1 mentions that the Centre is engaged in recruitment and assessment of scientists at all levels. Except this piece of evidence, no other facts are projected before the Tribunal to ascertain functions being performed by the Centre and to arrive at a conclusion as to whether those are regal functions of the State. The Centre recruits and makes assessment of work of scientists at all levels. These facts make it explicit that the Centre contributes its skill, knowledge and dexterity for production of resources relating to recruitment and assessment work of scientists. Such recruitment and assessment work would no doubt be services.

16. Whether services rendered by the Centre can be called material services? In R. Srinivasa Rao (1990 Lab. IC 174), activities of National Remote Sensing Agency, a research institute, mainly rendering consultancy service on survey facilities, viz. carry out survey by using remote sensing techniques for locating various natural resources for agriculture, hydrology, meteorology, fisheries, minerals, oil, soil, environmental manufacturing, forestry, ocean resources, tapping land sources and crop diseases and other sciences, surveillanoe, distribution of material to institutions and persons, were held to be material services. When assessed on above standards, activities being carried on by the Centre such as recruitment and assessment work of scientists are found to be material services. Such material services are also performed by private persons/companies too in other fields. Such services would not fall within the ambit of sovereign functions, since these functions would not answer the criteria of administrations of justice, maintenance of order, repression of crime, security of boarders from external aggression and legislative powers of the State. It could not be said that above services were being rendered by the Centre as welfare activities of the State. Consequently, the above activities do not fall within the ambit of regal functions of the State. There is no doubt that the Centre carries out systematic activities and its employees do not belong to such category which renders their services voluntarily without any remuneration. Therefore, it is emerging that triple test, referred above, stood satisfied and activities of the Centre falls within the ambit of industry as defined in Section 2(j) of the Act. objection raised by the Centre is brushed aside on that count.

17. Now, factual matrix of the controversy would be addressed. As admitted by the claimant, during course of cross examination, he was working for the contractor. He also admits that before the Conciliation Officer, contractor was arrayed as a party to the dispute. He further admits that it was the contractor who asked him not to attend to his duties. He met Shukla Sahib and Arvind Pandey to inform them that the contractor had terminated his services. He further admits that his wages were being paid by the contractor. On the same lines, Shri Shukla projects that salary of the claimant was paid by the contractor. The contractor has appointed him and dispensed with his service.

18. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the Centre? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment ;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation — If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

19. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation of other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd.[2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

> " ..... they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

20. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen

run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment, in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

21. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

22. In Shivnandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

23. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

24. As noted above, this precedent does not present an illustration of abolition of contract labour but an instance

where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

25. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

26. In view of the legal proposition, referred above, it is concluded that the claimant can maintain a dispute against the Centre in case he agitates that the contract agreement between the Centre and the Contractor is sham and nominal.

27. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

28. In the Steel Authority of India (supra) the Apex Court laid emphasis "...the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel , be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

29. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the Centre? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

30. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant

industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

31. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the Court thus:

> "53. Our conclusions and answers to the questions raised are, therefore, as follows:
>
> (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
>
> (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the I.D. Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.
>
> (iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

32. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

33. As detailed above, it is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the Centre and the contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex. MW1/1 by Shri Krishan Kumar. In construction of contents of Ex. MW1/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

34. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

35. Annexure-II of Ex. MW1/1 projects terms and conditions of the term agreement. In Clause 3 of the said documents, contractor is enjoined to maintain a number of registers, which are detailed hereunder:

a. Register of workmen as per Form XIII of Rule 75.

b. Employment cards as per Form XIV of Rule 76.

c. Muster Roll Register as per Form XVI of Rule 78.

d. Register of Wages as per Form XVII of Rule 78.

e. Any other register/record required by Labour Commissioner from time to time.

f. Notice showing rates wages, hours of work etc., shall be submitted to Labour Enforcement officer and a copy of the same displayed on the Notice Board in the Campus.

36. Contractor was under an obligation to comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employment Liability Act 1988, Workmen Compensation Act 1923, Industrial Disputes Act 1947, Maternity Benefits Act 1961 and the Contract Labour (R&A) Act 1970, which make it abundantly clear that it was the intention of the parties to honour all labour laws, applicable to the employees of the contractor.

37. The contractor undertook the obligation to provide uniform and identity card to its employees. Identity cards were to be surrendered to the Estate Manager of the Centre on completion of the contract period. Contractor was enjoined with a duty to select watch and ward personnel after verification of their antecedents. The employees so engaged were to be treated employees of the contractor with no liability on the part of the Centre. It was the contractor who as supposed to pay their wages. Employees of the contractor were to work for eight hours a day and six days in a week. Supervisor for watch and ward staff was also to be engaged by the contractor. Therefore, above terms of service make it clear that it was the contractor who exercised administrative, managerial, financial and disciplinary control over his employees. There was relationship of command and obedience between the contractor and his employees. He used to control and manage security guards through his supervisor. Consequently, it is apparent that the contract agreement cannot be termed as sham and nominal.

38. Since the contract agreement between the contractor and the Centre is found to be genuine, in such a situation, claimant, who is an employee of the contractor, cannot maintain the present dispute against the Centre. He is not entitled to any relief. There was no occasion for the Centre to terminate services of the claimant. As pointed above, his services were dispensed with by the contractor. The claimant has filed a false claim. The same is, therefore, dismissed. An award is, accordingiy, passed in favour of the Centre and against the claimant. It be sent to the appropriate Government for publication.

Dated : 5-10-2012.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स रिसर्च एण्ड अस्सिमैन्ट सेन्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 186/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था।

[सं. एल-42012/49/1998-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 186/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the M/s. Research & Assessment Centre and their workmen, which was received by the Central Government on 12-11-2012.

[No. L-42012/49/1998-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 186/2011

The General Secretary,
Delhi Karamchari Sangh,
D-60 (576), Chanderlok,
Gali No.8, Durga Puri,
Shahadra, Delh i -11 0032 ...Claimants Union

Versus

M/s. Research & Assessment Centre,
R.A.C. Building, Lucknow Road,
Timarpur, New Delhi ...Management

AWARD

Research and Assessment Centre (hereinafter referred as the Centre), located at Lucknow Road, Delhi, is engaged in recruitment/assessment of scientists at all levels. The Centre assigned its watch and ward services to M/s. Rishi Raj Management Services (hereinafter referred to as the Contractor). The contractor engaged Shri Shailesh Kumar Pandey to work as security guard at the gate of the Centre. Services of Shri Shailesh Kumar were-dispensed with by the contractor. Shri Shailesh Kumar raised a demand for reinstatement of his services with the Centre, which demand was not conceded to. Thereafter he raised an industrial dispute before the Conciliation Officer. Since the dispute was contested by the Centre, hence conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/49/98-IR(DU), New Delhi, dated 07-09-1998, with following terms:

> "Whether the action of the management of M/s. Research and Assessment Centre, New Delhi interminating the services of Shri Pandey Security Guard is legal and justified? If not, to what relief the workman is entitled to?"

2. Corrigendum was issued by the appropriate Government, vide order No.L-42012/49/98-IR(DU) dated 15-01-2002 wherein it was mentioned that the name of the workman in reference order may be read as 'Shailesh Kumar Pandey' in place of Shri Pandey.

3. Claim statement was filed by Shri Shailesh Kumar Pandey pleading therein that he was employed by the Centre as security guard in July 1989. He worked honestly and diligently and gave no chance of complaint to his superiors. All of a sudden, his services were terminated by the Centre on 04-10-1997, without making payment of his wages for September' 97. No opportunity was given to him to defend himself. No notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid to him. The order terminating his services is illegal. He claims that Centre may be directed to reinstate him in service with continuity and full back wages.

4. Claim was demurred by the Centre pleading that there existed no relationship of employer and employee between the parties. Claimant was never engaged by the Centre. He was an employee of M/s. Rishi Raj Management Services, to whom contract to carry out watch and ward services was awarded. The contractor terminated services of the claimant. There was no occasion for the Centre to give him notice or pay in lieu thereof and retrenchment compensation. The Centre further pleads that it is not an industry under the provisions of Industrial Disputes Act, 1947. The claimant is not entitled to any relief. His claim petition may be dismissed, pleads the Centre.

5. Claimant entered the witness box to establish his claim. Shri H.N.Shukla was also examined by him. Shri Krishan Kumar, Joint Director, unfolded facts on behalf of the Centre. No other witness was examined by either of the parties.

6. Vide order No.Z-22019/6/2007-IR(C-II) New Delhi, dated 11-02-2008, appropriate Government transferred the case to Central Government Industrial Tribunal No.II,

New Delhi, for adjudication. It was retransferred to this Tribunal vide order No.Z-22019/6/2007-IR(C-II), New Delhi, dated 30-03-2011, for adjudication.

7. Arguments were heard at the bar. Shri R.K. Srivastava, authorized representative, advanced arguments on behalf of the claimant. Shri Alok Bhasin, authorized

representative, presented facts on behalf of the Centre. Written submissions were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

8. At the outset, it was claimed on behalf of the Centre that it is not an industry. Hence this Tribunal has no jurisdiction to entertain the dispute for adjudication. Contra to it, Shri Srivastava presents that the Centre is an industry, since it satisfies the triple test laid down by the Apex Court in Bangalore Water Supply and Sewerage Board [1978 (2) SSC 213]. For an answer to the proposition raised, it would be expedient to construe definition of the term 'industry' defined in section 2(j) of the Industrial Disputes Act, 1947(in short the Act). For convenience, the said definition is extracted thus:

" "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

9. The definition of "industry" is both exhaustive and inclusive. It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz:, business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling, employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

10. Gloss was put on the definition of word "industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach. Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab.I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry" as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import.

(a) Where (i) systematic: activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an industry, in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures,"analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and

workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs, (iii) education institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctor serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C. 657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2 (j).

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the all categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanraj Giriji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 SC 610) is hereby rehabilitated."

11. Principles laid down in Bangalore Water Supply and Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The Centre agitates that it is not an industry. The view point held by the Centre is that no profit motive activities are being carried on by it. No business is being run, hence the Centre cannot be termed as an "industry". Except the facts referred above, the Centre nowhere projects any other factors to lay emphasis on the fact that is not an industry, Contra to it the claimant agitates that the centre is an 'industry'

12. In Ahmedabad Taxtile Industry's Research Association [1960 (2) LLJ 720] the association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were "material services" to the textile industry hence the association, answered the definition of industry. But in Safdarjung Hospital case (supra) was held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute [1966 (1) LLJ 33] the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs but not for one self nor for pleasure nor necessity for profit. Lack of business and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into "industry" if other tests are not satisfied.

13. One may project that the Centre carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of

word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur [1960 (1) LLJ 523] the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry", and to confer jurisdiction on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumberated the test: can such activity be carried on by a private individual or group of individuals? The answer to this is : if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "***sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within section 2(j)". In chief conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "***even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

14. In Physical Research Laboratory [1997 (2) LLJ] Apex court held that the Physical Research Laboratory is not an "industry" because it is not engaged in an activity which can be called business, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

15. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be plate for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

16. Now, I would turn to facts of the present controversy. In written statement, the Centre nowhere mentions the activities being carried on by it. In his affidavit Ex. MW1/A, tendered as evidence, Shri Krishan Kumar simply details that provisions of the Act are not applicable to the Centre since it is not an industry. Annexure I of Ex. MW1/1 mentions that the Centre is engaged in recruitment and assessment of scientists at all levels. Except this piece of evidence, no other facts are projected before the Tribunal to ascertain functions being performed by the Centre and to arrive at a conclusion as to whether those are regal functions of the State. The Centre recruits and makes assessment of work of scientists at all levels. These facts make it explicit that the Centre contributes its skill, knowledge and dexterity for production of resources relating to recruitment and assessment work of scientists. Such recruitment and assessment work would no doubt be services.

17. Whether services rendered by the Centre can be called material services? In R. Srinivasa Rao (1990 Lab.IC 174), activities of National Remote Sensing Agency, a research institute, mainly rendering consultancy service on survey facilities, viz. carry out survey by using remote sensing techniques for locating various natural resources for agriculture, hydrology, meteorology, fisheries, minerals, oil, soil, environmental manufacturing, forestry, ocean resources, tapping land sources and crop diseases and other sciences, surveillance, distribution of material to institutions and persons, were held to be material services. When assessed on above standards, activities being carried

on by the Centre such as recruitment and assessment work of scientists are found to be material services. Such material services are also performed by private persons/companies too in other fields. Such services would not fall within the ambit of sovereign functions, since these functions would not answer the criteria of administrations of justice, maintenance of order, repression of crime, security of boarders from external aggression and legislative powers of the State. It could not be said that above services were being rendered by the Centre as welfare activties of the State. Consequently, the above activites do not fall within the ambit of regal functions of the State. There is no doubt that the Centre carries out systematic activities and its employees do not belong to such category which renders their services voluntarily without any remuneration. Therefore, it is emerging that triple test, referred above, stood satisfied and activities" of the Centre falls within the ambit of industry as defined in section 2.(j) of the Act. Objection raised by the Centre is brushed aside on that count.

18. Now, factual matrix of the controversy would be addressed. As admitted by the claimant, during course of cross-examination, he was working for the contractor. He also admits that before the Conciliation Officer, contractor was arrayed as a party to the dispute. He further admits that it was the contractor who. asked him not to attend to his duties. He met Shukla Sahib and Arvind Pandey to inform them that the contractor had terminated his services. He further admits that his wages were being paid by the contractor. On the same lines, Shri Shukla projects that salary of the claimant was paid by the contractor. The contractor has appointed him and dispensed with his service.

19. From facts unfolded by the claimant and his witness, namely, Shri H.N. Shukla, it is crystal clear that the claimant was engaged as a security guard by the contractor. The contractor used to make payment of his wages. His services were dispensed with by the contractor. EX.WW1/6 is a letter written by the contractor to the Security Officer of the Centre, wherein he has mentioned that since the claimant had committed negligence in his duties, hence his services have been dispensed with, with effect from 25.09.1997. The authorities of the Centre commanded the contractor to provide services of some other guards and thereafter to dispense with the services of the claimant. These facts make it apparent that services of the claimant were done away by the contractor. Shri Krishan Kumar also unfolds that the claimant was engaged by the contractor and not by the Centre. From above facts, it stands established that the claimant was an employee of the contractor, who exercised control and supervision over his work. He used to make payment to the claimant. When claimant was found to be negligent in his duties, the contractor terminated his services. Consequently, it is evident that relationship of employer and employee never existed between the claimant and the Centre. On the other hand, it was the contractor who was the employer of the claimant.

20. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the Centre? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the. Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:—

(1) Notwithstading anything contained in this Act, the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process operation or other work in any establishment.

(2) Before issuing any notificatin under sub-section (1) in relation to an establishment the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as : —

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, businness, manufacture or occupation that is carried on in the establishment,

(b) whether is it of perennial nature, that is to say it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment,

(c) whether is it done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation- If a question arises whether any process or operation or other work is of perennial nature. the decision of the appropriate Government thereon shall be final."

21. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act. the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (2001 (7) S.C.C.1). The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid Dy the Apex Court, which is extracted thus:

".....they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

22. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of Section 10, prohiblting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case (1974 (3) SCC 66), the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under Section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

23. As announced by the Apex Court, on issuance of a prohibitive notification,prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. (1960 (II) LLJ. 233), which was referred with approval in Steel Authority of India.

24. In Shivnandan Sharma (1955(1) LLJ 688), the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers; including the appellant Head Cashier. The question before the Apex Court was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down: "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

25. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

"Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers'

subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

26. As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

27. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the .work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

28. In view of the legal proposition, referred above, it is concluded that the claimant can maintain a dispute against the Centre in case he agitates that the contract agreement between the Centre and the Contractor is sham and nominal.

29. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard to regulatory measures Section 7 requires the principal employer to get itsel registered, while Section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contaractor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab.I.C.75) the Apex Court considered the question, whether non-compliance of the provisions of Sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non- compliance either by the principal employer of Section 7 or by the contractor in complying the provisions of Section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

30. In the Steel Authority of India (supra) the Apex Court laid emphasis "...the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

31. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the Centre? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. (1967 (II) LLJ. 23) and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on

Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

32. After Contract Labour Act was Drought on statute book, the Apex. examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus: "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore: it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also he considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

33. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator. after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the I. D. Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the

necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

34. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract Labour Act.

35. As detailed above, it is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is lef to be approached on the proposition as to whether contract agreement entered into between the Centre and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex.MW1/1 by Shri Krishan Kumar. In construction of contents of Ex.MW1/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

36. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

37. Annexure-II of Ex.MW1/1 projects terms and conditions of the term agreement. In Clause 3 of the said documents, contractor is enjoined to maintain a number of registers, which are detailed hereunder :

a. Register of workmen as per Form XIII of Rule 75.

b. Employment cards as per Form XIV of Rule 76.

c. Muster Roll Register as per Form XVI of Rule 78.

d. Register of Wages as per Form XVII of Rule 78.

e. Any other register/record required by Labour Commissioner from time to time.

f. Notice showing rates wages, hours of work etc., shall be submitted to Labour Enforcement officer and a copy of the same displayed on the Notice Board in the Campus.

38. Contractor was under an obligation to comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employment Liability Act 1988, Workmen Compensation Act 1923, Industrial Disputes Act 1947, Maternity Benefits Act 1961 and the Contract Labour (R&A) Act 1970, which make it abundantly clear that it was the intention of the parties to honour all labour laws, applicable to the employees of the contractor.

39. The contractor undertook the obligation to provide uniform and identity card to its employees. Identity cards were to be surrendered to the Estate Manager of the Centre on completion of the contract period. Contractor was enjoined with a duty to select watch and ward personnel after verification of their antecedents. The employees so engaged were to be treated employees of the contractor with no liability on the part of the Centre. It was the contractor who was supposed to pay their wages. Employees of the contractor were to work for eight hours a day and six days in a week. Supervisor for watch and ward staff was also to be engaged by the contractor. Therefore, above terms of service make it clear that it was the contractor who exercised administrative mangerial, finacial and disciplinary control over his employees. There was relationship of command and obedience between the contractor and his employees. He used to control and manage security guards through his supervisor. Consequently, it is apparent that the contract agreement cannot be termed as sham and nominal.

40. Since the contract agreement between the contractor and the Centre is found to be genuine, in such a situation, claimant, who is an employee of the contractor, cannot maintain the present dispute against the centre. He is not entitled to any relief. There was no occasion for the Centre to terminate services of the claimant. As pointed above, his services were dispensed with by the contractor. The claimant has filed a false claim. The same is, therefore, dismissed. An award is, accordingly, passed in favour of the Centre and against the claimant. It be sent to the appropriate Government for publication.

Dated 5-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रिसर्च एण्ड असिस्मैन्ट सैन्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1 नई दिल्ली के पंचाट (संदर्भ संख्या 185/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2012 को प्राप्त हुआ था ।

[सं. एल-42012/48/1998-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.185/2011) of the Central Government Industrial Tribunal-cum-Labour Court, No.1 New Delhi as shown in the Annexure, in the Industrial Dispute between the M/s Research & Assessment Centre and their workman, which was received by the Central Government on 12-11-2012.

[No. L-42012/48/1998-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 185/2011

The General Secretary,
Delhi Karamchari Sangh,
D-60 (576), Chanderlok,
Gali No.8, Durga Puri,
Shahadra, Delhi -110032.

... Claimants Union

Versus

M/s. Research & Assessment Centre,
R.A.C. Building, Lucknow Road,
Timarpur, New Delhi.

... Management

AWARD

Research and Assessment Centre (hereinafter referred as the Centre), located at Lucknow Road, Delhi, is engaged in recruitment assessment of scientists at all levels. The Centre assigned its watch and ward services to M/s. Rishi Raj Management Services (hereinafter referred to as the contractor). The contractor engaged Shri Babu Ram to work as security guard at the gate of the Centre. Services of Shri Babu Ram were dispensed with by the contractor. Shri Babu Ram raised a demand for reinstatement of his services with the Centre, which demand was not conceded to. Thereafter he raised an industrial dispute before the Conciliation Officer. Since the dispute was contested by the Centre, hence conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/48/98-IR(DU), New Delhi, dated 7-9-1998, with following terms:

> "Whether the action of the management of M/s. Research and Assessment Centre, New Delhi in terminating the services of Shri Babu Ram, Security Guard is legal and justified ? If not, to what relief the concerned workman is entitled to?"

2. Claim statement was filed by Shri Babu Ram pleading therein that he was employed by the Centre as security guard in March 1993. He worked honestly and diligently and gave no chance of complaint to his superiors. All of a sudden, his services were terminated by the Centre on 7-10-1997, without making payment of his wages for September' 97. No opportunity was given to him to defend himself. No notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid to him. The order terminating his services is illegal. He claims that Centre may be directed to reinstate him in service with continuity and full back wages.

3. Claim was demurred by the Centre pleading that there existed no relationship of employer and employee between the parties. Claimant was never engaged by the Centre. He was an employee of M/s Rishi Raj Management Services, to whom contract to carry out watch and ward services was awarded. The contractor terminated services of the claimant. There was no occasion for the Centre to give him notice or pay in lieu thereof and retrenchment compensation. The Centre further pleads that it is not an industry under the provisions of Industrial Disputes Act, 1947. The claimant is not entitled to any relief. His claim petition may be dismissed, pleads the Centre.

4. Claimant entered the witness box to establish his claim. Shri H.N. Shukla was also examined by him. Shri Krishan Kumar, Joint Director, unfolded facts on behalf of the Centre. No other witness was examined by either of the parties.

5. Vide order No.Z-22019/6/2007-IR(C-II) New Delhi, dated 11-2-2008, appropriate Government transferred the case to Central Government Industrial Tribunal No.II, New Delhi, for adjudication. It was retransferred to this Tribunal vide order No.Z-20019/6/2007 -IR(C-II), New Delhi, dated 30-3-2011, for adjudication.

6. Arguments were heard at the bar. Shri R.K Srivastava, authorized representative, advanced arguments on behalf of the claimant. Shri Alok Bhasin, authorized representative, presented facts on behalf of the Centre. Written submissions were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

7. At the outset, it was claimed on behalf of the

Centre that it is not an industry. Hence this Tribunal has no jurisdiction to entertain the dispute for adjudication. Contra to it, Shri Srivastava presents that the Centre is an industry, since it satisfies the triple test laid down by the Apex Court in Bangalore Water Supply and Sewerage Board (1978 (2) SSC 213). For an answer to the proposition raised, it would be expedient to construe definition of the term 'industry' defined in Section 2(j) of the Industrial Disputes Act, 1947(in short the Act). For convenience, the said definition is extracted thus:

"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

8. The definition of "industry" is both exhaustive and inclusive, It is in two parts. The first part says that it "means any business, trade, undertaking, manufacture or calling of employers" and then goes to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workman." Thus one part defined it from the stand point of the employer, and the other part from the stand point of the employees. The first part of the definition gives the statutory meaning of the industry, whereas the second part deliberately refers to several other items of industry and bring them in the definition in an inclusive way. The first part of the definition determines any industry by reference to occupation of employers in respect of certain activities viz., business, trade, undertaking, manufacture or calling. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By this part of the definition any calling,' employment, handicraft, industrial occupation or avocation of workmen is included in the concept of industry. This part gives extended connotation.

9. Gloss was put on the definition of word "Industry" by the High Courts and the Apex Court time and again. The question as to what is "industry" has continuously baffled and perplexed the courts. A graph of the cases decided by the Apex Court, if plotted on the background of the expression used in two parts of the definition of "Industry", would represent rather a zig zag curve. There have been various judicial ventures in this rather volatile area of law. The decided cases show that the efforts were made to evolve test ,by reference to characteristics regarded as essential for constituting an activity as an "Industry". Various cases would show that the Apex Court has been guided more by empirical rather than a strictly analytical approach, Most of the decision have centered around the expression "undertaking" used in the definition. In Bangalore Water Supply and Sewerage Board (1978 Lab. I.C. 778) the Apex Court reviewed the earlier decisions on interpretation of the wide words encompassed in the definition and formulated positive and negative principles for identifying "industry"' as enacted by clause (j) of section 2 of the Act. It would be expedient to reproduce the authoritative pronouncement of the Court, in the very words set out in the majority decision, handed down by Justice Krishna Iyer, which are extracted thus:

"I. "Industry" as defined in S.2(j) and explained in Banerji (AIR 1953 S.C.58) has a wide import. "

(a) Where (i) systematic activity, (ii) organized by Co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale prasad or foods) prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of.philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, the re-meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerjee and in this judgement, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be 'industry' provided the nature of activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertaking, calling and services, adventures, "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of their statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs (iii) education institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindered adventures, if they fulfil the triple tests listed in 1 (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research

labs may qualify for exemption if in simple ventures, substantially, and going by the dominant nature criterion, substantively no employees are entertained but in menial matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

IV. The dominant nature test :

(a) Where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (AIR 1963 S.C.1873) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (AIR 1960 S.C.657) will be the true test. The whole undertaking will be industry although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by Govt. or statutory bodies.

(c) Even in department discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S.2(j)

(d) Constitutional and competently enacted legislative provisions may remove from the scope of the all categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 S.C.1407), Solicitors case (AIR 1962 S.C. 1080), Gymkhana (AIR 1968 S.C. 554), Delhi University (AIR 1963 S.C.1873), Dhanraj Giriji Hospital (AIR 1975 S.C. 2032) and other rulings whose ratio runs counter to the principles enunciated above, and the Hospital Mazdoor Sabha (AIR 1960 S.C. 610) is hereby rehabilitated."

10. Principles laid down in Bangalore Water Supply and Sewerage Board (supra) hold ground. Therefore, the controversy raised will be adjudicated in view of the law laid by the Apex Court in the precedent referred above. The Centre agitates that it is not an industry. The view point held by the Centre is that no profit motive activities are being carried on by it. No business is being run, hence the Centre cannot be termed as an "industry". Except the facts referred above, the Centre nowhere projects any other factors to lay emphasis on the fact that it is not an 'industry'. Contra to it the claimant agitates that the Centre is an 'industry'.

11. In Ahmedabad Taxtile Industry's Research Association (1960 (2) LLJ720) the association was established to carry on research with respect to the textile industry with a view to secure greater efficiency, rationalization and reduction of cost, which were "material services" to the textile industry hence the association answered the definition of industry. But in Safdarjung Hospital case (supra) was held to be an industry because it was a non-profit making body and its work was in the nature of training, research and treatment. In Indian Standard Institute (1966 (1) LLJ 33) the Apex Court suggested that in order to be recognized as an undertaking analogous to trade or business, the activity must be an economical activity in the sense that it is productive of material goods or material services. In Bangalore Water Supply and Sewerage Board (supra), the Apex Court laid down that an activity systematically or habitually undertaken for production or distribution of goods for rendering material services to the community at large or a part of such community with the help of employees is an undertaking. An 'industry' thus was said to involve cooperation between the employer and employees for the object of satisfying material human needs out not for oneself nor for pleasure nor necessity for profit. Lack of business. and profit motive or capital investment would not take out an activity from the sweep of 'industry', if other conditions are satisfied. It is the activity in question which attracts the definition and absence of investment of any capital or the fact that the activity is conducted for profit motive or not, would not make material difference. Conversely mere existence of profit motive will not necessarily convert the activity into 'industry' if other tests are not satisfied.

12. One may project that the Centre carry out sovereign functions hence it cannot be termed as an industry. Therefore it is expedient to know as to what are regal and sovereign functions of the State which may qualify for exemption from the ambit of the definition of word "industry"? Regal powers of the State has acquired a definite connotation, which can be described as "administration of justice, maintenance of order, repression of crime, security of borders from external aggression and legislative powers, as among the primary and inalienable functions of a Constitutional Government". In Corporation of City of Nagpur (1960 (1) LLJ 523) the Apex Court observed that it could not have been in contemplation of the legislature to bring in the regal functions of the State within the definition of "industry" and to confer jurisdiction

on Industrial Tribunal to decide disputes in respect thereof. The activities of the Government which can be properly described as regal or sovereign activities, are therefore, outside the scope of industry. In Hospital Mazdoor Sabha [1960 (1) LLJ 251] the Supreme Court adumberated the test: can such activity be carried on by a private individual or group of individuals ? The answer to this is if a business or activity could not be carried on by a private individual or group of individuals, it could not be an industry, while if it could be, it might fall within the scope of "industry". This test was reiterated in Corporation of City of Nagpur (supra) but rejected in Gymkhana Club [1967 (II) LLJ 720]. In Bangalore Water Supply and Sewerage Board (supra) the Apex Court observed "*** sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units, which are "industry" and they are substantially severable, they can be considered to come within Section 2(j)". In chief conservator of Forests [1996 (1) LLJ 1223] the above proposition was reiterated where in it was observed "*** even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as "industry", if substantially severable".

13. In Physical Research Laboratory [1997 (2) LLJ] Apex court held that the Physical Research Laboratory is not an 'industry' because it is not engaged in an activity which can be called business, trade or manufacturing nor it is an undertaking analogous to business or trade. It is not engaged in commercial or industrial activity and cannot be described as an economic venture or commercial enterprise as it is not its objective to produce and discharge services which would satisfy wants and needs of consumer community. It is not rendering any services to others. It is engaged in pure research in space science.

14. While reaching the conclusion, referred above, the Apex Court relied observations made in Bangalore Water Supply (supra) with respect to research institutes, which observations are extracted thus:

> "Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be plate for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries".

15. Now, I would turn to facts of the present controversy. In written statement, the Centre nowhere mentions the activities being carried on by it. In his affidavit Ex.MW1/A, tendered as evidence, Shri Krishan Kumar simply details that provisions of the Act are not applicable to the Centre since it is not an industry. Annexure I of Ex.MW1/1 mentions that the Centre is engaged in recruitment and assessment of scientists at all levels. Except this piece of evidence, no other facts are projected before the Tribunal to ascertain functions being performed by the Centre and to arrive at a conclusion as to whether those are regal functions of the State. The Centre recruits and makes assessment of work of scientists at all levels. These facts make it explicit that the Centre contributes its skill, knowledge and dexterity for production of resources relating to recruitment and assessment work of scientists. Such recruitment and assessment work would no doubt be services.

16. Whether services rendered by the Centre can be called material services? In R. Srinivasa Rao (1990 Lab.IC 174), activities of National Remote Sensing Agency, a research institute, mainly rendering consultancy service on survey facilities, viz. carry out survey by using remote sensing techniques for locating various natural resources for agriculture, hydrology, meteorology, fisheries, minerals, oil, soil, environmental manufacturing forestry, ocean resources, tapping land sources and crop diseases and other sciences, surveillance, distribution of material to institutions and persons, were held to be material services. When assessed on above standards, activities being carried on by the Centre such as recruitment and assessment work of scientists are found to be material services. Such material services are also performed by private persons/companies too in other fields. Such services would not fall within the ambit of sovereign functions, since these functions would not answer the criteria of administrations of justice, maintenance of order, repression of crime, security of boarders from external aggression and legislative powers of the State. It could not be said that above services were being rendered by the Centre as welfare activities of the

State. Consequently, the above activities do not fall within the ambit of regal functions of the State. There is no doubt that the Centre carries out systematic activities and its employees do not belong to such category which renders their services voluntarily without any remuneration. Therefore, it is emerging that triple test, referrred above, stood satisfied and activities of the Centre falls within the ambit of industry as defined in section 2(j) of the Act. Objection raised by the Centre is brushed aside on that count.

17. Now, factual matrix of the controversy would be addressed. As admitted by the claimant, during course of cross examination, he was working for the contractor. He also admits that before the Conciliation Officer, contractor was arrayed as a party to the dispute. He further admits that it was the contractor who asked him not to attend to his duties. He met Shukla Sahib and Arvind Pandey to inform them that the contractor had terminated his services. He further admits that his wages were being paid by the contractor. On the same lines, Shri Shukla projects that salary of the claimant was paid by the contractor. The contractor has appointed him and dispensed with his service.

18. From facts unfolded by the claimant and his witness, namely, Shri H.N. Shukla, it is crystal clear that the claimant was engaged as a security guard by the contractor. The contractor used to make payment of his wages. His services were dispensed with by the contractor. Ex.WW1/6 is a letter written by the contractor to the Security Officer of the Centre, wherein he has mentioned that since the claimant had committed negligence in his duties, hence his services have been dispensed with, with effect from 25-9-1997. The authorities of the Centre commanded the contractor to provide services of some other guard and thereafter to dispense with the services of the claimant. These facts make it apparent that services of the claimant were done away by the contractor. Shri Krishan Kumar also unfolds that the claimant was engaged by the contractor and not by the Centre. From above facts, it stands established that the claimant was an employee of the contractor, who exercised control and supervision over his work. He used to make payment to the claimant. When claimant was found to be negligent in his duties, the contractor terminated his services. Consequently, it is evident that relationship of employer and employee never existed between the claimant and the Centre. On the other hand, it was the contractor who was the employer of the claimant.

19. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the Centre? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:-

Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as —

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

20. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment ? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub- section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

".....they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal. rather a

camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

21. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355] a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

22. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/ camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

23. In Shivnandan Sharma [1955(1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank ? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

24. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking

at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

25. As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

26. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired: (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

27. In view of the legal proposition, referred above. It is concluded that the claimant can maintain a dispute against the Centre in case he agitates that the contract agreement between the Centre and the Contractor is sham and nominal.

28. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act ? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of Sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of Section 7 or by the contractor in complying the provisions of Section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

29. In the Steel Authority of India (supra) the Apex Court laid emphasis "..... the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

30. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the Centre? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

"29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

31. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C.724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

32. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be opposite to reproduce the observation of the Court thus:

"53. Our conclusions and answers to the questions raised are, therefore, as follows:

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the I.D. Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place

the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

33. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of Section 10 of the Contract Labour Act.

34. As detailed above, it is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant, is left to be approached on the proposition as to whether contract agreement entered into between the Centre and the Contractor was sham and nominal. For an answer to this proposition, it would be expedient to examine the contract agreement, which has been proved as Ex. MW1/1 by Shri Krishan Kumar. In construction of contents of Ex.MW1/1, this Tribunal cannot be oblivious of the rules viz., written instruments shall, if possible, be so interpreted "ut res magis valeat quam pereat" (a liberal construction should be put upon written instruments, so as to uphold them, if possible) and that such a meaning shall be given to it as may carry out and effectuate to the fullest extent the intention of the parties.

35. Elementary principle of law relative to contracts is that parties to contracts are to be allowed to regulate their rights and liabilities themselves and the Courts will only give effect to the intention of the parties as it is expressed by the contract. However the law in some cases overrides the will of the individual and renders ineffective and futile his expressed intention or contract. No court or tribunal will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. A contract cannot be made the subject of an action if it be impeachable on the grounds of dishonesty, or as being opposed to public policy, if it be either contra bonos mores, or forbidden by law. No court or tribunal will allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.

36. Annexure-II of Ex.MW1/1 projects terms and conditions of the term agreement. In Clause 3 of the said documents, contractor is enjoined to maintain a number of registers, which are detailed hereunder:

a. Register of workmen as per Form XIII of Rule 75.

b. Employment cards as per Form XIV of Rule 76.

c. Muster Roll Register as per Form XVI of Rule 78.

d. Register of Wages as per Form XVII of Rule 78.

e. Any other register/ record required by Labour Commissioner from time to time.

f. Notice showing rates wages, hours of work etc., shall be submitted to Labour Enforcement officer and a copy of the same displayed on the Notice Board in the Campus.

37. Contractor was under an obligation to comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employment Liability Act 1988, Workmen Compensation Act 1923, Industrial Disputes Act 1947, Maternity Benefits Act 1961 and the Contract Labour (R & A) Act 1970, which make it abundantly clear that it was the intention of the parties to honour all labour laws, applicable to the employees of the contractor.

38. The contractor undertook the obligation to provide uniform and identity card to its employees. Identity cards were to be surrendered to the Estate Manager of the Centre on completion of the contract period. Contractor was enjoined with a duty to select watch and ward personnel after verification of their antecedents. The employees so engaged were to be treated employees of the contractor with no liability on the part of the Centre. It was the contractor who was supposed to pay their wages. Employees of the contractor were to work for eight hours a day and six days in a week. Supervisor for watch and ward staff was also to be engaged by the contractor. Therefore, above terms of service make it clear that it was the contractor who exercised administrative, managerial, financial and disciplinary control over his employees. There was relationship of command and obedience between the contractor and his employees. He used to control and manage security guards through his supervisor. Consequently, it is apparent that the contract agreement cannot be termed as sham and nominal.

39. Since the contract agreement between the contractor and the Centre is found to be genuine, in such a situation, claimant, who is an emmployee of the contractor, cannot maintain the present dispute against the centre. He is not entitled to any relief. There was no occasion for the Centre to terminate services of the claimant. As pointed above, his services were dispensed with by the contractor. The claimant has filed a false claim. The same is, therefore, dismissed. An award is, accordingly, passed in favour of the Centre and against the claimant. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 5-10-2012.

4466 GI/12-17

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स हट्टी गोल्ड माइन्स, रायचूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 11/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-2012 को प्राप्त हुआ था ।

[सं. एल-29011/95/2002-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2012

S.O. 3601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 11/2003) of the Central Government Industrial Tribunal/ Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Hutti Gold Mines (Raichur) and their workman, which was received by the Central Government on 5-11-2012.

[No. L-29011/95/2002-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 24th September, 2012

Present : Shri S. N. NAVALGUND, Presiding Officer

C.R. No. 11/2003

I Party

Sh. Chandrashekar,
Engg. T No. 843, Quarter No. JL
23/5, HGM Camp,
Lingasur,
RAICHUR - 584 115,
Karnataka.

II Party

The Executive Director,
M/s. Hutti Gold Mines,
P. O. Lingasugur,
Tq. Raichur, Hutti (PO),
RAICHUR- 574 115,
Karnataka.

Appearances :

I Party : Shri K. V. Sathyanarayana Advocate

II Party : Shri M. R. C. Ravi, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-29011/ 95/2002-IR(M) dated 17-03-2003 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of M/s. Hutti Gold Mines Company Limited, Hutti, Raichur District, Karnataka State in dismising Sh. Chandrashekar Ex T No. 843 from the services is justified? If not, to what relief, award the workman is entitled to?"

2. After completion of the pleadings and evidence of both sides on 02-03-2012 the learned advocate appearing for the II party when filed a Memo in obedience to the order of the High Court in W P No. 7519/2005 the I party having been reinstated into service reference having become infractuous he requests to dispose off the dispute, On that Memo the counsel representing the I party made submission on the same day stating that continuity of service and scale being not given, to that effect I party wants to contest the reference and on such submission the matter was adjourned to consider whether such benefits could be given to the I party in view of the order of the Hon'ble High Court in W P No. 7519/2005. Thereafter, in spite of providing number of opportunities the I party and his counsel did not turn up. In the said Writ Petition wherein the II party had called in question the award passed by Labour Court, Gulbarga in KID No. 145/2001 and 147/ 2001 the Hon'ble High Court confirmed the award except to the extent of granting back wages to Sh. Chandrashekar who is I party in this reference. In view of this order of the Hon'ble High Court if at all in the Award passed by the Labour Court, Gulbarga in KID No. 145/2001 and 147/2001 there is a scope for claiming scale wage and continuity of service and same is denied the same can be put for execution before the competent authority and there is no scope to consider the said aspect in this reference or claim made by the I party in this reference. Moreover, it is seen from the Order issued by II Party dated 07-02-2012 the copy of which is annexed to the Memo dated 07-03-2012 that besides reinstatement G-8 Grade Scale Wages and continuity of service has been given to him. Under the circumstance the reference is liable to be rejected I party being admittedly reinstated into service acting upon the order passed by the Hon'ble High Court in W P No. 7519/ 2005 while confirming the award passed by the Labour Court, Gulbarga in KID No. 145/2001 and 147/2001. In the result, I pass the following award:

ORDER

The reference is rejected in view of the order of the Hon'ble High Court of Karnataka in W P No. 7519/2005

wherein it has upheld the award of Labour Court, Gulbarga relating to the reinstatement of the I party workman while setting aside the award to the extent of backwages. Under the circumstances the I party is not entitled for any relief made in his claim statement.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कंडला पोर्ट ट्रस्ट गांधीधाम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1203/2004, आईटीसी सं. 18/2002 (पुराना)) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-2012 को प्राप्त हुआ था ।

[सं. एल-37011/3/2002-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2012

S.O. 3602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1203/2004, ITC No. 18/2002 (Old)) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Kandla Port Trust (Gandhidham) and their workman, which was received by the Central Government on 5-11-2012.

[No. L-37011/3/2002-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present
Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 10-10-2012

Reference: CGIT A of 1203/2004

Reference: ITC. 18/2002(Old)

The Chairman,
Kandla Port Trust,
Administrative Office,
P.B. No.-50, Gandhidham (Kutch),
Gandhidham- 370 201. .....First Party

And

Their workman
Shri Shambhulal N. Patel
11, Ravechinagar Society No.2,
Village-Antarjal, Vic Adiput,
Tal-Gandhidham-370 205. .....Second Party

For the first party : Shri Anil S. Gogia, Advocate

For the second party : Shri Shambhulal N. Patel (workman himself)

AWARD

The Appropriate Govemment/Govt. of India Ministry of Labour/Shram Mantralay by its order No. L-37011/3/2002 (IR (M)) New Delhi, dated 01-08-2002, in exercise of powers conferred by clause (d) of Section (1) and sub-Section (2A) of Section 10 of Industrial Dispute Act, 1947 referred the dispute for adjudication to the Industrial Tribunal, Rajkot, formulating the terms of reference as follows:-

SCHEDULE

"Whether the action of the management of Kandla Port Trust, Gandhidham to dismiss the services of Shri Shambhaulal N. Patel, Khalasi w.e.f. 29-06-2001 is justified? If not, what relief the workman is entitled for and since when?"

(2) Consequent of issuance of notice to the parties, the second party workman appeared in this case. The second party workman submitted his statement of claim at Ext. 2 on 28-11-2002, stating therein that advance copy of statement of claim was sent to the chairman K.P.T. on 12-09-2002. It has been further stated that punishment of dismissal of his service by order dated 29.06.2001 is quite illegal, improper and unjust and against the principles of natural justice and with the order of dismissal finding report of Enquiry Officer was not sent which is violation of rule 12 (14) of K.P.T. C.C.A. Regulation, 1964 and also ignoring settle principles of the Hon'ble Supreme Court in the case of Managing Director, E.C.I.L V/s V.B. Karunakar (A.I.R. 1994 S.C. 1074). Further contention is that the order of dismissal was not passed by competent authority. Chief Medical Officer K.P. T who imposed punishment order is not disciplinary authority in true sense. No opportunity was given to him to defend against proposed punishment.

(3) The second party again submitted detailed statement of claim on the ground that earlier statement of claim dated 28-11-2012 had been filed in brief due to ignorance of court proceeding and so this s/c is being filed. The case of the 2nd party is that in the year 1979 he started working as daily rated labourer under Chief Mechanical Engineer in the Civil Engineering Department of the 1st party organization. He was working as Khalasi (cleaner). His father was 1st class Engine Driver in 1st party organization in the year 1979-80. His father died in the year 1981 during service period. Then the management of 1st party kept the workman in service as heirs of deceased father and since he all along worked 240 days in calendar year from 1979 to 20-10-1983. A seniority list of Khalasi

was prepared and his serial No. was 199. Subsequently he was confirmed in service on 29-09-1995. Thereafter by order dated 29-06-2001 he was removed from the services and at that time his basic pay was Rs. 4930 and total monthly salary was Rs. 7525. Further case is that the action of management in reporting him absence from duty on 14-10-1996 and 22-10-1996 is illegal and unwarranted and concocted. Whereas he was all along coming on duty. The domestic enquiry was conducted against him but no any witness/evidence was produced in support of his absenteeism. The Enquiry officer submitted finding report to the Disciplinary Authority that charge have not been proved against the delinquent but in spite of that the management of 1st party illegally appointed C.M.G. as Disciplinary authority for going against the Enquiry report and imposed punishment of removal by order dated 29-06-2001. Further case is that no 2nd show cause was given by disciplinary authority and his service was terminated directly without giving opportunity of hearing and representation and that enquiry report of the enquiry officer dated 24-04-2001 was not furnished to him. Further case is that for the reported date of absenteeism on 14-10-1996 and 22-10-1996 he was paid wages by the management of 1st party and in spite of no evidence coming during enquiry to support charges he was wrongly punished. The order of termination passed by chief medical officer K.P.T. is illegal and without jurisdiction and she (C.M.O.) was not appointing authority rather appoint authority was Chief Engineer under which the workman was doing works. Against his illegal removal from service he made written complaint before A.L.C. (C) Gandhidham but conciliation failed and thereafter failure report sent and the reference order sent for adjudication as dispute. Further case is that after removal from the service he remained unemployed and he tried for job but could not get. On these grounds prayer has been made to declare that the order dated 29-06-2001 regarding his removal from the service is illegal, unjust, improper and against the principles of natural justice and for reinstatement with full back wages and continuity in service and for cost of the case and for any other relief to which he is found entitled.

(4) The first party in spite of several notice issued from transferee courts did not submit written statement whereas s.p. was filling pursis on dates for closing the right of the 1st party to file w.s. and right of the 1st party had also been closed in this case, Eventually the management of 1st party (K.P.T.) files w.s. on 26-03-2009 and also files a pursis Ext. 20 praying for reopening the right of filing w.s. and as per order below Ext. 20 right of 1st party was reopened and the w.s. filed on 26-03-2009 was recorded as Ext. 20/1 on 21-01-2011.

(5) The case of the 1st party pleading inter-allia is that the averment and contentions raised by the second party in the statement of claim are vague, misleading, false and are denied by the 1st party. It has been asserted that the second party was dismissed from the services after holding full fledge departmental enquiry and was given sufficient opportunity to defence his case and that in view of gravity of misconduct of the second party punishment of dismissal is just, proper and reasonable, there is no ground to interfere in the order of punishment by the court. It has been stated that s.p. workmen was working on post of Khalasi and he committed serious misconduct and so under regulation 12 of Kandla Port Trunst Employees Regulation, 1964, departmental enquiry was initiated against the workman vide memo. No. EG/PS/0318/23 dated 04-06-1997 by the Chief Engineer Kandla Port Trust based on the statement of imputation of misconduct and the article of charge were framed against the workman -(1) he remained absent from duty place without permission from his superior and-was in the habit of reporting for duty late and leaving the duty place early which is in violation of regulation 2 (s) (ii) of Kandla Port Employees (conduct) Regulation, 1964, (2) he does very little quantity of work and neglected the work allotted to him in violation of Regulation 3 (8) (ii) of K.P. E. (conduct) Regulation, 1964, (3) he was in the habit of threatening his co-workers and superior officers which was subversive discipline and good behaviour in violation of Regulation 3 (8) (ii) of K.P.E (conduct) Regulations and from the previous records he (Shambhu) was found to be habitual of misconduct and behaviour and failed to maintain integrity as part employee in violation of regulation 3 of Kandla Port Trust Employee (conduct) Regulation, 1964. Further case is that the s.p. workman was given opportunity to submit reply but he failed to submit and then departmental enquiry had been ordered by Disciplinary Authority i.e. Chief Engineer, Kandla Port Trust by appointing Shri K.A. Raisinghani, Executive Engineer (Harbour) as Enquiry Officer vide order No. EG/P.S/0328/73 dated 21-02-1998 and Shri M.K. Khushalani, the Chief S.D.O (B & R) as Presiding Officer vide order No. EG/PS/0328/74 dated 21-02-1998. On commencement of Enquiry on request of Shri K.A. Raisinghani he was relieved from the responsibility of E.O. and then vide order No. EG/RS/0328/91 dated 22-04-1998 Shri D.D. Somiya, Executive Engineer (C-1) was appointed as Enquiry Officer for conducting enquiry against the workman Shri Shambhulal N. Patel. During enquiry the delinquent workman made allegations against the Enquiry officer and presenting officer which were found baseless. On completion of enquiry E.O submitted his report to the Disciplinary Authority on 24.04.2001. The .D.A. Shri N.R. Pai Chief Engineer was repatriated to his parent organization and so, the chairman Kandla Port Trust vide order No. EG/PS/0328/49 dated 08-06-2001 appointed Dr. (Smt) M.R. Mahedik, Chief Medical Officer, Kandla Port Trust as Disciplinary Authority to decide and dispose of the Disciplinary proceeding against the delinquent workman Shambhulal. Further case is that the E.O reported that charges has not been proved against the delinquent. Thereafter the D.A. (C.M.O.) considering the entire proceeding of enquiry and oral evidence and

other facts, disagreed with the findings of the E.O. and gave the detailed reasons and the D.A. held the delinquent workman guilty for all the charges. Then the D.A. vide letter No. EG/PS/0328/64 dated 12.06.2001 sent intimation to the workman regarding disagreeing with the findings of E.O. by giving separate report as to charge No.1 to 4 and asked the workman to make any representation before 25-06-2001. The s.p. workman refused to accept the communication and returned the same on the plea that the envelope does not have the seal of the Disciplinary Authority. When no representation was made by s.p. then the D.A. (CMO) decided by passing punishment order as to dismissal from the services. The dismissal order was sent to the delinquent through Executive Engineer (Roads) but he (the workman) refused to accept. The dismissal order was published in the local newspaper viz Kuchmitra and Kutch Uday. Further case is that the past record of the s.p. was not good and that aspect was also considered while imposing the punishment of dismissal. Alternatively it has been submitted that that if this tribunal vitiates the departmental enquiry and found the findings of the E.O. perverse then the first party be given the opportunity to justify its action by conducting enquiry by leading evidence before the tribunal. Further ground taken that the s.p. after dismissal remained in gainful employment. On these scores prayer to reject the reference since the workman Shambhulal is not entitled to any relief.

(6) The second party workman Shambhulal N. Patel filed his affidavit at Ext. 13 in lieu of examination in chief on 25-09-2008 and thereafter he was cross- examined by the 1st party's lawyer Shri Anil S. Gogia on 21-01-2011 on reopening the right of 1st party to cross-examine the workman : First party submitted as many as 25 documents/ papers as per list Ext. 30 on 18-05-2010 with a pursis at Ext. 29 to record the filing of documents and as per order dated 21-01-2011 pursis at Ext. 29 was allowed and document at Ext. 30 were recorded which are true copy of report against workman by Estate Officer dated 16-10-1996 Ext. 30/1, report against the workman by Estate Officer dated 22-10-1996 Ext. 30/2, report against workman by Devgi Khalasi dated 16-10-1996 Ext, 30/3, memorandum issued to workman dated 15-01-1997 Ext. 30/4, reply of memorandum of workman dated 24.01.2007 Ext. 30/5, memorandum with articles of charges framed against workman dated 4-06-1997, Ext. 30/6, order regarding appointment of E.O. and P.O., Ext. 30/7, letters from C.E. to Engg. Department dated 6-09-1997, 22-08-1998, 24-06-1999 Ext. 30/8, 30/9 and 30/10 respectively, Enquiry proceedings dated 21-01-1999, 20-03-1999, 1-04-1999, 03-06-1999 Ext. 30/11 to 30/15, written submission of P.O. dated 21-01-1999 Ext. 30/16, -

letter dated 17-02-1999 Ext. 30/17 letter from E.E. to T.D Revision Ext. 30/18, Enquiry report of E.O. dated 24-04-2001 Ext. 30/19, letter from Disciplinary Authority to the workman dated 12-06-2001, Ext. 30/20, Report of E.E. road Division dated 12-06-2001 Ext. 30/21, punishment , order of Disciplinary Authority dated 29.06.2001 Ext. 30/22, Kandla Port Employees clarification and Control Regulation 1964 Ext. 30/23, letter of workman to Disciplinary Authority dated 8-10-2001 Ext. 30/24 and appeal filed by the delinquent workman dated 8-10-2001 Ext. 30/25 and the copies furnished to the second party on 18-05-2010. However the 1st party failed to adduce any oral evidence in this case and eventually right to lead oral evidence was closed on 20-04-2012 vide Ext. 40.

(7) In view of the pleadings of the parties the following issues have been taken up for discussions, consideration and arriving at decision in this case.

ISSUES

(I) Whether the reference is maintainable?

(II) Has the second party (workman) valid cause of action in this case?

(III) Whether the action of the management of 1st party through appointment of C.M.O. as Disciplinary Authority and disagreeing with the report and finding of the Enquiry officer and imposing the penalty of termination from the service of the workman Shri Shambhulal Patel w.e.f. 29-06-2001 is legal and just or not?

(IV) Whether the punishment imposed upon the delinquent workman (s.p.) is shockingly disproportionate to the gravity of misconduct under the articles of chargers?

(V) Whether the second party (workman) is entitled to the relief as claimed?

(VI) What orders are to be passed?

FINDINGS

(8) ISSUE No. III

The second party workman Shri Shambhulal N. Patel in his oral evidence at Ext. 13 has categorically stated that allegations made against him by the management of 1st party through false reports of Road section Estate Officers on 16-10-1996 and 22-10-1996 against his absent from duty, and false report was also procured of Devgi Khalasi and Pahilaj Prem khalasi on 16-11-1996 that he (Shambhu) was not found on duty on 22-10-1996 from 11 am to 12 am and that he was coming late on duty and used to left duty place earlier at 2.30 p.m. It has been also stated that false articles of charges were issued against him and so those were not substantiated in enquiry held against him by witness of management and so the Enquiry Officer gave finding as to charges not proved against the delinquent. He was cross-examined by Shri Anil S. Gogia, Advocate of the first party on 21-01-2011. He deposed that he is aged about 50 years and in his family there is his wife, two daughter and one son and that his son is maintaining all the family members after he become

major and before that his relatives were maintaining and that he remained all along unemployed after removal from the service. Vide para 4 he deposed that the management of K.P. T has issued charge sheet upon him which was received after expiry of period of written reply and so he could not reply because date of filing reply had expired. He further stated that Pahalji Prem Khalasi was working with him on the sight and Devji Kachhra was working on another site. He claimed that Pahlaj Prem never made report against his absent from duty. He voluntarily stated that Pahlaj Prem was himself on leave but the management procured false report from him. He further stated that his superior had reported against him it was known to him on 15-01-1997 when memo was received by him and he had replied. He further stated that memorandum of charge sheet dated 4-06-1997 was received by him. He admitted that Enquiry was conducted by E.O. in his pressure. He further stated that he had not received and notice of Disciplinary Authority as to differing and disagreeing with the findings of E.O. and finding him guilty to the charges. He further stated that order of punishment of removal from services w.e.f. 29-06-2001 was received by him later on whereas on 29-06-2001 he was on duty. He further deposed that he did not receive copy of report of E.O. along with punishment order. He admitted that he preferred department appeal against the punishment order. He deposed vide para 5 that he received wages for 22-10-1996 and it is not true that on 22-10-1996 he was not found on duty. He stated that Enquiry Officer in his report did not find evidence of his absenteeism from duty on 16-10-1996 and 22-10-1996. He stated that it is not true that he was giving out threats to his senior officers.

(9) On the other hand there is no oral evidence of the 1st party for supporting the case as per w.s. Ext. 20/1 except the documents relating to domestic enquiry as Ext. 30/1 to 30/25.

(10) Ext. 30/19 is enquiry report dated 24-04-2001 of E.O submitted to the Disciplinary Authority (Chief Engineer). At para 4 it has been mentioned that inquiry proceedings commenced from 15-10-1998 and completed on 10-08-2000 and during that period enquiry sittings were held on 15-10-1998, 16-1-1999, 21-1-1999, 20-3-1999, 1-04-1999, 3-6-1999, 27-08-1999, 7-9-1999, 29-9-1999, 4-10-1999, 7-12-1999, 13-12-1999, 22-2-2000, 25-2-2000, 29-2-2000, 3-.3-2000, 7-3-2000, 9-3-2000, 22.03.2000, 18-3-2000, 18-4-2000, 26-5-2000, 13-6-2000, 21-6-2000 and 10-08-2000. During enquiry proceedings the 3 managements witness Shri Mir Anzaria J.E. (C), Shri Devji Kachra (Khalasi) and Shri Prem Pahilaj (Khalasi) were examined by P.O. The E.O. at para 7 of his report with Heading "conclusion" has clearly incorporated that none of the management witnesses has stated any things in favour of the charges and allegations leveled against the Delinquent Employee and that the Presenting Officer could not bring forth any material evidence, in support of the charges and allegations during the enquiry proceedings in spite of giving full opportunity- The defence could establish beyond doubt that the charged employee has not committed serious negligence as dereliction of duty and not violated Regulation Employees (conduct) Regulation, 1964. Vide para 6 of report it has come that as per posting register of 22-10-1996 on which complaint were made by Shri Pahlaj Prem Shri Devji Kachra, go to show that Shri Pehlaj Prem was not posted along with D.E. (Shri Shambhu (w) not his name was not mentioned in the posting register. The other witness Shri Devji Kachra was declared hostile by the P.O. since he did not. support the allegation against the D.E. From perusal of written complaint made by Devji Kachra and Shri Pehlaj Prem as per Ext. 30/3 it appears that it is dated 16-11-1996 on the subject of absent from duty of Khalasi Shambhulal on 22-10-1996 which was procured after long gap by the management of 1st party. But those witnesses did not support the allegation before the enquiry officer. How a person can be competent witness to say about absenting of any of co-worker when he was not posted at that site. More so, reporting by estate officer dated 10-10-1996 and 22-10-1996 and even written complaint of two Khalasi dated 16-11-1996 regarding absent from duty of D.E. was not substantive evidence to support charge No. 1. More so, no evidence was produced during enquiry by presenting officer for substantiating charge No.1 or regarding charge No. 2 neglecting to carry out the work, or regarding charge No. 3 giving out threatening to co-worker and to the executive Engineer. The said executive engineer has not been examined to substantiate the charge No.3. The three witnesses Mir Anjaria, Devji Kachra and Pehlaj Prem has not stated on giving out threat to them by the D.E. More so, the delinquent workman Shri Shambhulal N. Patel was a class IV employee working as Khalasi and there was no allegation of cheating, theft, defalcation, forgery etc. for framing charge No. IV regard failing to maintain absolute integrity so charge No. IV under articles of charge against a Khalasi who used to do manual work and not involved in the defalcation or forgery was itself a redundant charge leveled against the delinquent. More so there was complete lack of evidence during entire enquiry proceeding. The statement of imposition of misconduct regarding Article IV the D.E. is habitual of misconduct and misbehavior has not also been proved through evidence by the presenting officer.

(11) Now coming to examine the disagreement report of D.A. (C.M.O) K.P.T. from finding of E.O that none of the charges has been proved. For charge No. 1 the D.A. has based her finding different to E.O. on the reports of J.E. Shri Mir Anzaria on 22-10-1996 to Sub Divisional officer on 5-2-1997 and as to inspection of the Executive Engineer (T.D.) to the side where Shambhulal Patel was given posting by corroborating through the log book of vehicle through with E.E. visited the side. It is very surprising how log book can speak about allegation of

absenteeism of D.E. from duty place. Neither the S.D.O. nor the Executive Engineer have been presented as witnesses by the presenting officer to substantiate charge No. 1. So far as charge No. 2 is concerned it has only been mentioned by D.A. in her disagreement report that charge No. 2 is much related to charge No. 1 and when charge No. 1 is being proved so charge No.2 is proved that D.E. was very slack in performing work. It is very surprising that when charge No. 1 regarding attending the duty late and leaving the work place much before has not been proved, then how on surmises and conjecture charge No. 2 can be proved regarding slow in performing work. It is well settled that proof of charges in domestic enquiry is upon preponderance of evidence, but there is no such preponderance of cogent evidence to prove charge No. 1 other then surmises and conjecture that how the same can be used to prove charge No. 2. So far as charge No. 3 is concerned the D.A. found it to be proved by the reply explanation dated 24-01-1997 of delinquent workman submitted to E.E. (T.D.). From perusal of written explanation dated 24-01-1997 of D.E. (Ext. 30/5) in the beginning it has been explained that he (D.E.) have been discharging duty with dedication and devotion from date I joined in Kandla Port Trust service. At para 3 he stated that I have not done anything amounting to the misconduct as stated in your letter dated 15-01-2001 (Ext. 30/4) At para 4 it has been mentioned without waiting for my reply you have straightway given me threatening for disciplinary action. This is not a fair labour practice. Vide para 5 he submitted that the J.E. who reported as to absent from duty place, himself never attends duty in time and also leaves the site early. So question of marking presence of labourer giving them posting and inspection at site does not arise. At para 6 it has been explained in starting lines it is only question of personal like and dislike and not the merit of the case that matters in Kandla Port Trust. He made explanation that Mr. H. H. Gehani E.E. (T.D.) is carrying bias against me and intend to take revenge against me whereas I am in a position to prove it with documentary evidence and then mentioning to file corruption case against Mr. H.R. Gehani E.E. (T.D.) under the law. It may be pertinent that every citizen has been guaranteed as to fundamental rights and every person is equal before law, and if the D.E. was wrongly exceeding his limits and have bad gave out threat to Mr. H.H. Gehani E.E. then he ought to have made separate complaint against the D.E. before Higher Officer or even ought to have launched criminal complaint against the workman regarding committing offence of defamation, criminal intimidation etc. More so, the article of charge No. III is not based upon any reporting by E.E. (T.D.) regarding giving out of threats in course of duty at any duty place by the workman. Even the E.E. (T.D) Shri H.H. Gehani has not come as witness before domestic enquiry. So only by written explanation of workman dated 24-01-2001 Ext. 30/5 do not go to prove misconduct as to charge No. 3 I have already discussed that charge No.4 regarding not maintaining honesty and integrity is redundant because the workman was not involved in bribery, defalcation, theft of K.P.T. property, forgery. A Khalasi like workman doing manual work usually should not be made imputation regarding failing to maintain honesty and integrity unnecessarily circumpenting such person as a weapon to impose maximum punishment of dismissal from the service.

(12) From the above discussion I find that the appointed D.A.(C.M.O.) has not given cogent reasoning to differ with the findings of the E.O. Ext. 30/19. More so the Hon'ble Apex court in the case of Luv Nigam and Chairman and Managing Director I.T.C. Ltd and another 2007 (1) Labour law notes 682 have held that Disciplinary Authority differing from the findings of not guilty by the enquiry officer, then the employee is entitled to notice from the D.A. to show cause against the tentative decision of the D.A. differing with the findings of the enquiry officer who had exonerated the employee. It has been further held that the proceedings may be commenced from the stage of issuance of fresh show cause notice by the D.A. But in the instant case it appears that the D.A. had not commenced proceeding from the stag of issuance of fresh show cause notice upon the second Party workman for conducting further enquiry himself, rather second show cause notice with propose punishment of dismissal was issued. The oral evidence of workman at Ext. 13 shows that he did not receive letter of D.A. differing with finding within stipulated period rather got it after expiry of stipulated period 25-06-2001. There is no evidence on behalf of 1st party whether reminder notice was sent to the workman or not. More so, no acknowledgement of receipt of workman regarding receipt of notice from D.A. has been filed. More so there is no evidence on behalf of the 1st party that the Disciplinary Authority had commenced proceeding by issuance of fresh show cause notice with clear findings or the opinion disagreeing with the enquiry report (Ext. 30/19) and also indicating that there are material in the enquiry proceeding itself to prove the charges leveled against him. In the case law of Union of India Vs. S.S. Valand (AIR 1964 S.C. 36) it has been held by their Lordship that suspicion cannot take the place of proof in departmental enquiry and holding an employee guilty and punishing him for corrupt conduct merely on suspicion is held to be unjustified. From the perusal of the disagreement report of D.A. Ext. 30/20, I do not find that the D.A. has pointed out that there are sufficient materials more than suspicion in holding the second party workman guilty to all the 4 charges. Rather it appears that appointed Disciplinary Authority (C.M.O.) by the management of K.P.T. was in a mood to punish the delinquent workman in spite of he being not found guilty to any of the charges by the Enquiry officer as per report dated 24-04-2001 (Ext. 30/19).

(13) Considering all the materials on the record discussed above and also in view of the facts and circumstances of the case and the legal position as

discussed in the case laws, I find and hold that the action of the management of K.P.T. in imposing the punishment of dismissal from the services of Shri Shambhulal N. Patel, Khalasi w.e.f. 29-06-2001 is not at all legal, proper, justified. This issue is decided against the 1st party.

(14) ISSUE NO. IV

The principles of natural justice has not been followed by the Disciplinary Authority in right perspective without affording sufficient opportunity and while deciding issue No. III in the foregoing paragraph that major misconduct as to charge No. III and IV had not been proved so even in the event of proof of charge No. 1 which were actually not been proved, the imposing of punishment of dismissal from the services of the second party workman is obviously disproportionate to the gravity of the misconduct. So this issue is decided against the 1st party.

(15) ISSUE NO. I & II

In view of the findings to issue No. III & IV in the foregoings, I further find and hold that the reference is maintainable and the second party workman has valid cause of action to raise Industrial Dispute against the management of K.P.T.

(16) ISSUE NO. V & VI

In view of my findings to issue No. I, II, III, IV in the foregoing paras, I find and hold that the second party workman is entitled for reinstatement to his work and continuity in service with consequential benefits, However he is found entitled to get 50% of back wages.

This reference is allowed on contest. No order as to cost.

The order of punishment dated 29-06-2001 is not at all justified and so the same is set aside. The workman is directed to be reinstated in service by the management of 1st party within 30 days of the receipt of the copy of this award failing which the amount of 50% back wages will carry interest @ 9% P.A.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सतना स्टोन एंड लाईम कंपनी लिमिटेड कोलकत्ता के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 23, 24, 25, 71/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-11-2012 को प्राप्त हुआ था ।

[सं. एल-29012/18, 19, 20, 46/2008-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 22nd November, 2012

S.O. 3603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23, 24, 25, 71/2008) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Satna Stone & Lime Co. Ltd. (Kolkatta) and their workman, which was received by the Central Government on 5-11-2012.

[No. L-29012/18, 19, 20, 46/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

CASE No. CGIT/LC/R/23/08, 24/08, 25/08 & 71/08

Shri Ram Saroj Kushwaha,
General Secretary,
AITUC Distt. Parishad,
AITUC Office, Sidharth Nagar,
Post Birla Vikas,
Distt. Satna (MP) ...Workman/Union

Versus

The Managing Director,
Satna Stone & Lime Co. Ltd.,
6, Middle Road, Hasting,
Kolkatta ...Management

AWARD

Passed on this 17th day of October 2012

1. (a) The Government of India, Ministry of Labour vide its Notification No.L-29012(18)/2008-IR(M) dated 4-3-2008 has referred the following dispute for adjudication by this tribunal :—

" Whether the lock-out of Satna Stone & Lime Company Ltd., Siding, Madhya Pradesh w.e.f. 17-8-00 was legal or not?" .

" Whether the action of Satna Stone & Lime Company Ltd., Siding, Satna MP in not paying wages w.e.f. 1-5-2000 to 17-8-2000 to Shri Bhagwandin Chamaar, S/o Shri Surjava Chamaar and bonus and retrenchment compensation for the period 1999 to 2001 is just and legal? If not, to. what relief the workman is entitled to?"

(b) The Government of India, Ministry of Labour vide its Notification No.L-29012(19)/2008-IR(M) dated 4-3-2008 has referred the following dispute for adjudication by this tribunal:-

" Whether the lock-out of Satna Stone & Lime Company Ltd., Siding, Madhya Pradesh w.e.f. 17-8-2000 was legal or not?"

" Whether the action of Satna Stone & Lime Company Ltd., Siding, Satna MP in not paying wages w.e.f. 1-5-2000 to 17-8-2000 to Shri Lalman Chamaar S/o Shri Mithailal Chamaar and bonus and retrenchment compensation for the period 1999 to 2001 is just and legal? If not, to what relief the workman is entitled to?"

(c) The Government of India, Ministry of Labour vide its Notification No.L-29012(20)/2008-IR(M) dated 4-3-2008 has referred the following dispute for adjudication by this tribunal :—

"Whether the lock-out of Satna Stone & Lime Company Ltd., Siding, Madhya Pradesh w.e.f. 17-8-2000 was legal or not?"

"Whether the action of Satna Stone & Lime Company Ltd., Siding, Satna MP in not paying wages w.e.f. 1-5-2000 to 17-8-2000 to Shri Dadehi Chamaar S/o Shri Makhan Chamaar and bonus and retrenchment compensation for the period 1999 to 2001 is just and legal? If not, to what relief the workman is entitled to?"

(d) The Government of India, Ministry of Labour vide its Notification No.L-29012(46)/2008-IR(M) dated 10-6-2008 has referred the following dispute for adjudication by this tribunal:-

"Whether the lock-out of Satna Stone & Lime Company Ltd., Siding, Madhya Pradesh w.e.f. 17-8-2000 was legal or not?"

" Whether the action of Satna Stone & Lime Company Ltd., Siding, Satna MP in not paying wages w.e.f. 1-5-2000 to 17-8-2000 to Shri Dadoli Chamaar S/o Shri Chunkai Chamaar and bonus and retrenchment compensation for the period 1999 to 2001 is just and legal? If not, to what relief the workman is entitled to?"

2. All the four reference cases are taken up together as all are on a common subject matter and on same issues.

3. In all the cases, the Union or the workmen did not appear inspite of notice by registered post. This clearly shows that Union/workmen do not want to raise dispute before the Tribunal. It also looks probable that now no dispute is in existence. As such the cases of the workmen are closed.

4. On the other hand, the management also did not appear in the case inspite of registered notice issued against him. This aspect also shows that now there is no dispute between the parties in existence. It appears to be useless to keep pending these cases when the parties have no interest. This shows that these are the cases of no dispute. The references are accordingly answered.

5. In the result, a common no dispute award is passed in all the references without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

4466 GI/12-19

नई दिल्ली, 4 दिसम्बर, 2012

का.आ. 3604.—जबकि मैसर्स पावर ग्रिड कार्पोरेशन ऑफ इन्डिया लिमिटेड [दिल्ली (दक्षिण) क्षेत्र में कोड संख्या डीएल/12882 के अंतर्गत] (एतदुपरान्त प्रतिष्ठान के रूप में संदर्भित) को कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरान्त अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है ।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं है और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना 1952 (एतदुपरान्त योजना के रूप में संदर्भित) के अंतर्गत सदृश स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं ।

3. अतः, केन्द्रीय सरकार, अब उक्त अधिनियम, की धारा 17 की उपधारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अध्यधीन, उक्त प्रतिष्ठान को अगली अधिसूचना तक 01-11-1990 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है ।

[सं. एस-35015/08/2012-एसएस-II]

सुभाष कुमार, अवर सचिव

New Delhi, the 4th December, 2012

S.O.3604.—Whereas M/s. Power Grid Corporation of India Limited. [Under Code No. DL/12882 in Delhi (South) Region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01-11-1990 until further notification.

[No. S-35015/08/2012-SS-II]

SUBHASH KUMAR, Under Secy.

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3605.—राष्ट्रपति, केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के पीठासीन अधिकारी के रिक्त पद हेतु लिंक अधिकारी के रूप में केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, बंगलोर, के पीठासीन अधिकारी, श्री एस.एन. नवलगुंड के कार्यकाल को 3-11-2012 से छ माह की अवधि तक अथवा नियमित पदधारक की नियुक्ति होने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो तब तक के लिए बढ़ाते हैं ।

[सं. ए-11016/3/2009-सीएलएस-II]
अजय जोशी, अवर सचिव

New Delhi, the 5th December, 2012

S.O. 3605.—The President is pleased to extend the period of additional charge of the post of Presiding Officer of the CGIT-cum-Labour Court, Hyderabad entrusted to Justice Shri S.N.Navalgund, Presiding Officer, CGIT-cum-Labour Court, Banglore for another six months with effect from 3-11-2012 or till the post is filled on regular basis or until further orders whichever is earlier.

[No. A-11016/3/2009-CLS-II]
AJAY JOSHI, Under Secy.

नई दिल्ली, 5 दिसम्बर, 2012

का.आ. 3606.—राष्ट्रपति, केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, कोलकता के पीठासीन अधिकारी के रिक्त पद हेतु लिंक अधिकारी के रूप में केंद्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय-सह-संख्या:1, मुंबई, के पीठासीन अधिकारी, श्री जी.एस.सरीफ के कार्यकाल को 27-8-2012 से छः माह की अवधि तक अथवा नियमित पदधारक की नियुक्ति होने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो तब तक के लिए बढ़ाते हैं ।

[सं. ए-11016/3/2009-सीएलएस-II]
अजय जोशी, अवर सचिव

New Delhi, the 5th December, 2012

S.O. 3606.—The President is pleased to extend the period of additional charge of the post of Presiding Officer of the CGIT-cum-Labour Court, Kolkata entrusted -to Justice Shri G.S. Sarraf, Presiding Officer, CGIT-cum-Labour Court No.1, Mumbai for another six months with effect from 27-8-2012 or till the post is filled on regular basis or until further orders whichever is earlier.

[No. A-11016/3/2009-CLS-II]
AJAY JOSHI, Under Secy.

नई दिल्ली, 16 नवम्बर, 2012

का.आ. 3607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 54/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-11-2012 को प्राप्त हुआ था ।

[सं. एल-12012/238/97-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 16th November, 2012

S.O. 3607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. C.R.No.54/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the Managemant of United Western Bank Ltd. and their workman and their workman, received by the Central Government on 16-11-2012.

[No. L-12012/238/97-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"Shram Sadan"
G.G. Palya, Tumkur Road,
Yeshwantpur, Bangalore - 560 022.

Dated : 3rd October, 2012

Present : SHRI S. N. NAVALGUND, Presiding Officer

C. R. No. 54/1998

I Party

Sh. G Kumar,
S/o Giriyappa, No. 98/8,
Nagappa Street, 1st Main Road, Seshadripuram
BANGALORE - 560 020.

II Party

The Branch Manager,
Industrial Bank of India formerly
known as The United Western Bank Limited,
Registered Office,
No. 172/A, Raviwar Peth,
Shivaji Circle,
SATARA - 415 001.

Appearances

I Party : Shri K V Sathyanarayan, Advocate

II Party : Sh. R Nagendra Naik, Advocate

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L- 12012/238/97-IR(B.I) dated 5-6-1998 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of United Western Bank Limited is justified in dismissing Shri G. Kumar w.e.f. 3-1-1995 ? If not, to what relief the workman is entitled ?"

2. The brief facts leading to this reference and award may be stated as under:

Sh. G. Kumar, S/o Giriyappa (hereinafter referred as I party) who was appointed as sub-staff/peon in the United Western Bank Limited, which subsequently named as Industrial Development Bank of India (herein after referred as II Party) while working at its Bangalore Branch served with charge sheet as under:

"Mr. G. Kumar,
Peon,
Bangalore Branch.

Sir,

At present you have been posted as a peon at our Bangalore branch and have been placed under suspension.

It is reported against you as under.

On 13-6-94 at about 4.30 P.M. you left the branch for going to Reserve Bank of India for collecting instruments drawn on our Bank pertaining to second clearing. You collected the clearing instruments from Reserve Bank of India at about 5.45 P.M. whereas you returned to the branch at about 7.15 P.M.

While collecting the clearing instruments you did not collect the said clearing settlement sheet alongwith the said instruments. Subsequently it is revealed that you removed one instrument Payslip No. 32885 dtd. 13-6-94 favour The Laxmi Vilas Bank Ltd. for Rs. 10 lacs from the clearing instruments. You collected in second clearing. As a result Bank could not return the said instrument in time and thereby suffered a monetary loss of Rs. 10 lacs.

The Bank, therefore, charges you as under.

Charge No. 1 : Wilful damage to the property of the Bank which is an act of gross misconduct under Clause 19.5 (d) of B P Settlement 1966 as amended up to date.

Charge No. 2 : Doing any act prejudicial to the interest the Bank involving the Bank in serious loss which is an act of gross misconduct under Clause 19.5 (j) of B P Settlement 1966 as amended upto date.

The enquiry will be conducted by Shri N. K. Khasbardar, Manager, Toap branch of our Bank who is appointed as the Enquiry Officer, who will advise, you about the date, time and place of the enquiry.

You may give your written statement, if any, in your defence to the Enquiry Officer at least three days before the date of the enquiry. You will be permitted to be defended by a representative of a registered trade union of bank employees of which you are a member on the date first notified for the commencement of the enquiry; and if you are not a member of any trade union of bank employee on the aforesaid date by a representative of a registered trade union of the employees of the bank in which you are employed;

OR

at the request of the said union by a representative of the State Federation of all India Organization to which such union is affiliated;

OR

with the Bank's permission by a lawyer;

to produce your evidence, to examine witnesses in your defence and to cross-examine the witnesses brought by the Bank against you at the enquiry. Please note that the enquiry may be proceeded with in your absence if you do not appear at the appointed date, time and place of the enquiry.

Yours faithfully,

Sd/-

Asstt. General Manager,

Disciplinary Authority"

and initiated with a Domestic Enquiry by appointing Sh. N. K Khasbardar, Manager, as Enquiry Officer and Sh. A. H Joshi, Officer, as Presenting Officer. The Enquiry Officer securing the presence of CSE/I party who appeared alongwith Sh. K Shashi Kumar Kedlaya as Defence Representative, after observing the formalities of preliminary hearing while recording the evidence of Sh. V. D. Kulkarni, Manager as MW 1 for the management and exhibiting 15 documents as exhibits MEx - 1 to MEx - 15 and also the evidence of CSE and exhibiting 2 documents as exhibits DEx - 1 and DEx - 2 details of which are given in the annexure, after receiving the written brief from the Presenting Officer and Defence Representative submitted his finding dated 24-10-1994 charges leveled against the CSE/I Party being proved.The Disciplinary

Authority while affording the opportunity of personal hearing to the CSE/I Party which is said to have not been availed by him proposed the order of punishment of dismissal by his order dated 2-11-1994 and then after providing an opportunity to show cause why he should not be dismissed passed the impugned order of punishment of dismissal without notice by order dated 3-1-1995. On appeal by the I party the Appellate Authority after affording the opportunity of hearing passed order dated 19-1-1996 confirming the punishment imposed by the Disciplinary Authority. Then on failure of the conciliation proceedings raised by the CSE/I Party the Central Government made this reference for the adjudication.

3. On riceipt of the reference from the Central Government my learned predecessor while registering it in CR 54/1998, securing the presence of both sides who entered their appearance through their respective advocates after completion of the pleadings while raising a Preliminary Issue as to "Whether the Domestic Enquiry conducted by the II Party against the I Party is fair and proper ?" after receiving the evidence of Enquiry Officer and exhibiting six documents

Ex·M-1: Charge Sheet dated 29.06.1994.

Ex M-2: Proceedings maintained by the Enquiry Officer.

Ex M-3: Finding of the enquiry.

Ex M-4: Order passed by the Disciplinary Authority.

Ex M-5: Order passed by the Appellate Authority.

Ex.M-6: Complaint lodged by the Manager.

and also of the I party as WW 1 and exhibiting two documents

Ex. W-1: Copy of FIR

Ex. W-2 : Copy of Plaint in Original Suit No. 10634 of 1995

after hearing the arguments addressed by their learned advocates by order dated 11-7-2002 held the Domestic Enquiry being Fair and Proper. Thereafter hearing the arguments addressed by learned advocates appearing for both sides on merits by award dated 20-11-2002 Partly allowed the reference setting aside the order of dismissal directed for his reinstatement with continuity of service and all other service benefits except backwages. When the said award was challenged by the II party before the Hon'ble High Court of Karnataka in W P No. 18015/2003(L-TER), the Hon'ble High Court by order dated 21-10-2008 observing that the tribunal, vaguely without assigning reasons and without appreciating the material on record having held the findings of the Enquiry Officer as perverse the same is liable to be quashed, allowed the Writ Petition, quashed the award and remanded the matter for fresh disposal in accordance with law after providing an opportunity to both the parties.

4. On receipt of the copy of the order of the Hon'ble High Court passed in W P No. 18015/2003 (L-TER) while re-registering the reference in the Original number securing the presence of both sides who entered their appearance through their advocates after both of them filed their written arguments it has now come up for award. After remand by the Hon'ble High Court the learned advocate appearing for the I party while producing the certified copy of the judgement in OS 10634/1995 on the file of City Civil Court dated 13-11-1999 (Names of parties) got it marked as Ex W-3.

5. Since as already addressed to by me above the order of my learned predecessor on the aspect of Domestic Enquiry being fair and proper having remained undisturbed and the arguments have been addressed on merits the points that now remains for my consideration are:

1. Whether the finding of the Enquiry Officer charges being proved is perverse?

2. If not, whether the punishment imposed of dismissal from service is disproportionate to the charge proved ?

3. To what relief the I party is entitled to?

6. On appreciation of the oral and documentary evidence brought on record by both the sides in the Domestic Enquiry and the judgement in OS No. 10634/1995 in the light of the arguments put forward before me my finding on point no.1 is in the affirmative, No. 2 does not survive for consideration and No. 3 as per final order for the following reasons :

REASONS

7. Accodirding to the II party on 13-06-1994 at 04.30 p.m. I party , left the branch for going to Reserve Bank of India for collecting instruments drawn on the bank pertaining to second clearing and collecting the clearing instruments from Reserve Bank of India at about 05.45 p.m. returned to the branch at about 07.15 p.m. and that he had not collected Clearing Settlement Sheet along with the instruments and subsequently it revealed he had removed one instrument (Pay Slip 328895 dated 13-6-1994 favouring the Lakshmi Vilas Bank Limited for Rs. 10 lakhs) as a result bank could not return the said instrument in time and thereby suffered monetory loss of Rs. 10 lakhs and thereby he wilfully caused damage to the property of the bank which is an act of gross misconduct under clause 19.5(d) of the BPS, 1966 and it also amounts to doing an act

prejudicial to the interest of the bank involving the bank in serious loss which is an act of misconduct under 19.5(j) of BPS, 1966 as amended upto date. Inter alia, it is the defence of the I party that on 13-6-1994 the Branch Manager while permitting him to go out on personal work had instructed him to collect the clearing cheques from the clearing house and accordingly while collecting the cheques from the Reserve Bank of India he returned to the branch and handed over them and on the next day i.e., 14-6-1994 though he attended to his duties as usual the Branch Manager did not enquire him of any lapse on his part in collecting the clearing cheques and only on 17-6-1994 the Assistant General Manager (Disciplinary Authority) addressed a letter to him that on his request to the Branch Manager to permit him to go to the Reserve Bank of India for fetching the cheques from the clearing house pertaining to the first clearing he left the bank at 10.30 a.m. and returned to the bank at 2.00 p.m. though in the normal course the clearing peon would leave at 12.15 p.m. and come at 01.15 p.m. and that he had repeatedly taken permission, to go for the second clearing and after being permitted by the Branch Manager left the branch at 04.30 p.m and returned at 07.30 p.m. and because of that delay on his part an instrument of Rs. 10 lakhs could not be returned to the Lakshmi Vilas Bank and thus by his negligence he caused a loss of Rs. 10 lakhs and called upon him to give his explanation within 24 hours and as he could not give his reply within such short period he was served with charge sheet dated 29-6-1994 wherein it was also intimated Sh. N. K. Khasbardar being appointed as Enquiry Officer and Sh. A. H. Joshi as Presenting Officer. It is also the defence of the I party that he had handed over all the instruments collected from the clearing house to the bank and it was the procedure to collect the clearing settlement sheet on the following day by the sub-staff going to collect the instruments for first clearing and accordingly the sub-staff went for first clearing on the following day had brought the clearing settlement sheet pertaining to the previous day i.e. 13-6-1994 and the official who checked the same had marked (√) indicating that instrument Pay Slip 328895 dated 13-6-1994 favouring the lakshmi Vilas Bank Limited for Rs. 10 lakhs also being received and it appears later due to his negligence he misplaced it which is said to have been found in plastic pocket by Sh. Mirajkar, clerk and that in order to save them he has been made scape goat. He also contended no loss has been caused to the II party as in the suit filed by the II party on the file of XXVI Additional City Civil and Sessions Judge at Bangalore in 10635/1995 against the Lakshmi Vilas Bank same being decreed directing the Lakshmi Vilas Bank to pay the said amount of Rs. 10 lakhs along with 6 % interest thereon by judgement dated 13-11-2009 the copy of which he has got marked as Ex. W-3.

8. As urged on behalf of the I party in the Domestic Enquiry the only witness examined for the II party being Sh. V. D. Kulkarni, Manager, Bangalore Branch and it has come in his evidence that on 13-6-1994 at 04.30 p.m. and some of the relatives of Mr. G. Kumar (I party) had come to him he requested him to permit him to go along with his relatives for some work and also to allow him to bring the second clearing instruments from Reserve Bank of India and as on 13th and 14th June, 1994 the Assistant Branch Manager and the Officer from Foreign Exchange Department were on joining leave, himself and Mr. Terdalkar the Officer and Mr. V. R. Kulkarni the Head Clerk were alone on duty at the Branch and that tallying of the clearing for the second clearing is done at RBI between 05.30 to 06.00 p.m. and for any reason if the tallying of the house is delayed the remarks to that effect comes in the Clearing Settlement Sheet and as there was no such remarks Mr. G. Kumar was expected to reach the branch by 06.15 to 06.20 p.m but he came at 07.30 p.m. and that on 14-6-1994 Mr. M. G. Terdalkar, Officer reported him that the clearing instruments for the second clearing brought by Mr. G. Kumar (I Party) was not accompanied with the clearing settlement sheet and that in normal practice the clearing is checked and claims are verified in the morning at the beginning of the office hours and I party was when enquired regarding the settlement sheet he told that it was not ready as such he instructed the clearing clerk Mrs. Veena Kiran to bring the Second Clearing Sheet of 13-6-1994 when she went to present the first clearing of 14-6-1994 and accordingly she brought the second clearing sheet at 12.45 p.m. and due to pressure of the routine work he could not tally the instruments brought by the I party with the clearing sheet and that on tallying of the said settlement sheet and the instruments brought by the I party and handed over to him on the previous day, Pay Slip 328895 dated 13.06.1994 favouring the Lakshmi Vilas Bank Limited for Rs. 10 lakhs was not found .and it has also come in his evidence that on 14-6-1994 Sh. Mirajkar, Clerk found a plastic pocket containing the pay order in question. In the back ground of this, when on the clearing settlement sheet pertaining to the second clearing of 13-6-1994 which is at Ex M-5 against S1. No. 25 which is pertaining to Lakshmi Vilas (√) mark being first made and then made it to read as (X) it indicates that Mr. Terdalkar who verified the instruments with the clearing settlement sheet received the pay slip in question, later having lost it by his negligence appears to have created such a story to cover up his negligence attributing not bringing the Pay Slip in question is probable as asserted by I party. The II party having not examined either Mr. Terdalkar, Officer or Sh. Mirja Sab, Clerk in respect of their say the evidence of MW 1 (Mr. V. D. Kulkarni), Branch Manager being hear say the Enquiry Officer placing reliance on his evidence and believing the story levelled against the I party is perverse and not sustainable. Moreover, the judgement of XXVI Additional City Civil and Session Judge, Bangalore certified copy of which is produced at Ex. W-3 by the I party since do indicate the Lakshmi Vilas Bank being directed to pay Rs. 10 lakhs the amount of instrument in question (Pay Slip 328895 dated 13-6-1994) along with interest @ 6% per annum

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to II Party no monetary loss being caused to the II party bank the charge against the I party that he willfully caused damage to the property of the bank and there by committed an act of misconduct under 19.5(d) of the BPS or did an act prejudicial to the Bank involving the bank in serious loss and thereby committing a gross misconduct as provided under clause 19.5 (j) of BPS falls to the ground. Under the circumstances, I arrived at conclusion the finding of the Enquiry Officer charge being proved is perverse and unsustainable.

9. In view of my finding on Point No. 1 wherein I have held the finding of the Enquiry Officer charge is proved is perverse and unsustainable the consequent punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority based on that enquiry finding does not sustian as such the Pont No. 2 raised for consideration does not survive.

10. In view of my finding on Point No.1 the punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority do not sustain and the I party is entitled for his reinstatement in service with continuity of the service as well. Even after my learned predecessor held the Domestic Enquiry as fair and proper or even after remand by the Hon'ble High Court the I party having failed to lead any evidence being not gainfully employed and he had also not challenged the earlier award denying him back wages, I am of the opinion that he is not entitled for back wages. In view of the submission made by the learned counsel appearing for the II party before the Hon'ble High Court in W P no. 18015/2003(L-TER) the I party having been reinstated in service he is entitled to continue in service. In the result, I pass the following order :

ORDER

The reference is allowed holding that the action of the management of United Western Bank Limited now known as Industrial Development Bank of India is not justified in dismissing Sh. G. Kumar w.e.f. 3-1-1995 and that he is entitled for reinstatement, continuity of service and all other consequential benefits that he would have received in the absence of the impugned punishment order except the back wages date of his dismissal till he has been reinstated in service. Since he has already been reinstated into service he is entitled to continue in service. No order as to cost.

(Dictated to UDC, transcribed by him, corrected and signed by me on 3rd October, 2012).

S. N. NAVALGUND, Presiding Officer

ANNEXURE - I

List of witnesses examined before the Enquiry Officer:

MW I - Sh. V. D. Kulkarni, Manager, Bangalore Branch

DW I - Sh. G. Kumar, CSE

Documents exhibited on behalf of the Management before the Enquiry Officer:

M Ex - 1- Charge sheet dated 29-06-1994.

M Ex - 2- Letter dt. 17th June 1994 addressed to The General Manager, Staff, H O. Satara by the Manager, Bangalore Branch (5 Pages).

M Ex - 3- Letter dt. 21st June 1994 bearing a No.UWB/ Bangalore/Police-Case/1406 addressed to Upparpet Police Station by the Manager, Bangalore Branch (1 Page).

M Ex - 4- Pay Slip No. 328895 dt. 13th June 1994 for Rs. 10,00,000 (Certified Xerox Copy).

M Ex - 5- Certified Copy of R. B. I. Settlement Sheet (Clg.) dt. 13-6-94 (2 Pages).

M Ex - 6- Police Complaint dt. 16th June 94 lodged with Upparpet Police Station by Manager, Bangalore Branch (3 Pages).

M Ex - 7- Xerox copy of an order of Sessions Judge, Bangalore in the matter of Miscellaneous Application 1337/94 (5 Pages).

M Ex - 8- R.B.I. Clearing Settlement Sheet No. 2 dt. 10th June 94 (1 page)

M Ex - 9- R.B.I. Clearing Settlement Sheet No. 2 dt. 14th June 94 (1 page)

M Ex - 10- R.B.I. Clearing Settlement Sheet No. 2 dt. 22nd June 94 (1 page)

M Ex - 11- R.B.I. Clearing Settlement Sheet No. 2 dt. 25th June 94 (1 page)

M Ex - 12- R.B.I. Clearing Settlement Sheet No. 2 dt. 30-3-94 (1 page).

M Ex - 13- R.B.I. Clearing Settlement Sheet No. 2 dt. 15-4-94 (1 page)

M Ex - 14- R.B.I. Clearing Settlement Sheet No. 2 dt. 17-6-94 (1 page)

M Ex - 15- R.B.I. Clearing Settlement Sheet No. 2 dt. 27-6-94 (1 page)

Documents exhibited on behalf of the CSE before the Enquiry Officer :

D Ex-1- Xerox copy of Uniform Regulations and Rules for Bankers Clearing Houses circulated by RBI

D Ex-2- Xerox copy of Payslip Issue Register, for the period 31-3-94 to 1-7-94.

नई दिल्ली, 19 नवम्बर, 2012

का.आ. 3608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टैण्डर्ड चार्टेड

बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 1/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-2012 को प्राप्त हुआ था ।

[सं. एल-12025/01/2012-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 19th November, 2012

S.O.3608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No.1/2010, arising out of Ref. 15/2008) of the Central Government Industrial Tribunal No. 1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of The Standard Charted Bank and their workman, received by the Central Government on 19-11-2012.

[No. L-12025/01/2012-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. l, MUMBAI

Justice G. S. SARRAF, Presiding Officer

Complaint No. CGIT-l/l of 2010
Arising out of Ref. CGIT-l/15 of 2008

Parties:

Mrs.Anupama Naik ... Complainant

Vs.

The Standard Chartered Bank ... Opposite Party

Appearances:

For the Complainant : Shri P.Gopalkrishnan, Adv.

For the Opposite Party : Shri Ashok Shetty, Adv.

State : Maharashtra

Mumbai, dated 16th October, 2012.

AWARD

1.The complainant has filed this complaint under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. According to the complainant she joined the service of the opposite party as a clerk w.e.f.15-2-1988 and continued in its employment thereafter till the opposite party dismissed her from the service. On the date the opposite party dismissed the complainant by dismissal order dt.14-10-2009, Reference No.CGIT-1/15 of 2008 was pending before this Tribunal. Notwithstanding the pendency of the aforesaid industrial dispute the opposite party failed to pay to the complainant wages for one month and simultaneously failed to make an application to this Tribunal for approval of its action of dismissing the complainant from service as required under Proviso to Section 33(2) of the Act. For the aforesaid reason the dismissal order dt.14-10-2009 passed by the opposite party against the complainant is illegal, void and not sustainable under law. The complainant has, therefore, prayed that the order of dismissal dt.14-10-2009 passed by the opposite party against the complainant be quashed and set aside and the complainant be reinstated with immediate effect.

3. The opposite party has filed written statement wherein it has stated that the complainant is not a workman as defined in Section 2(s) of the Act. The complainant was in grade 8 of the management cadre and was drawing the allowances as applicable to the supervisory and managerial cadre of the staff and not the wages and allowances payable to the award staff. The last drawn wages of the complainant were a total of Rs.37,255.58 pm. The appraisal form submitted by the complainant in the year 2004 showed that the job title held by her was "Officer Recoveries". Moreover the complainant is not a party (workman) concerned in the Reference CGIT-l/15 of 2008. According to the written statement the complainant was allegedly involved in the theft of a credit card and fraudulent withdrawal of money from City Bank ATM using the said stolen credit card. The complainant was arrested by the Dadar Police Station on 24-4-2006 and the amount of rupees one lakh was recovered under panchanama after which she was granted bail. The opposite party has, therefore, prayed that the complaint be rejected.

4. The complainant has filed rejoinder.

5. The complainant has filed her affidavit and she has been cross-examined by learned counsel for the opposite party. The opposite party has filed affidavit of Vikrant Gurha, Head - Employee Relations and he has been cross-examined by learned counsel for the complainant.

6. Heard Shri P.Gopalkrishnan on behalf of the complainant and Shri Ashok Shetty on behalf of the opposite party.

7. Principally the issue which arises before this Tribunal for consideration is whether the complainant is a workman and she can be regarded as a workman concerned in Ref. CGIT-l/15 of 2008 under Section 33(2) of the Act.

8. Section 33(2) of the Act runs as under:

> During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the

terms of the contract, whether express or implied, between him and the workman]—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

The object of the provisions of Section 33(2) is to protect the workman against victimisation and unfair labour practice by the employer during the pendency of the industrial dispute and the proviso thereto which requires inter alia that an application be made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer is designed to achieve that purpose. Compliance of the proviso is a mandatory requirement.

9. This is correct that the complainant has been chargesheeted under the Employee Discipline Policy of Standard Chartered Bank (India) as well as under the Model Standing Orders (Central). However, the complainant, in her cross examination, has admitted that she was promoted as an Officer and at the time of termination she was in Officers Grade 8 B and she was looking after credit card recoveries. She has further stated in her cross examination:

> "I am not sure about the fact that whether I was bound by Employees Discipline Policy of Standard Chartered Bank (India) or by the bipartite settlement.....I cannot say that whether I was not a workman on the date of my dismissal".

In view of the statement of the complainant herself it cannot be said that the complainant was a workman under Section 2(s) of the Act.

10. A person to be a workman under the Act must be employed to do the work of any of the categories, namely, manual, unskilled, skilled, technical operational, clerical or supervisory. It is clear that the complainant has not adduced any evidence whatsoever as regards the nature of her duties so as to establish that she performed any skilled, unskilled, manual, technical or operational duties. The onus is on the complainant to prove that she is a workman. She has failed to prove the same.

11. There can be no dispute in the position in law that in order to attract the applicability of Section 33(2)(b) of the Act the complainant must be a workman concerned in the Reference CGIT-1/15 of 2008 pending before this Court. The word 'concerned' connotes a kind of specific and direct interest in a given legal or quasi-legal proceeding and the proceeding is of such a nature that its result would directly benefit or prejudice the person concerned. However, the complainant has not led any evidence whatsoever to establish that she is a workman concerned in Reference CGIT-1/15 of 2008.

12. In view of above discussion I do not find any substance in the complaint.

13. Consequently the complaint is rejected.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2012

का.आ. 3609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.1, दिल्ली के पंचाट (संदर्भ संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-2012 को प्राप्त हुआ था।

[सं. एल-12025/01/2012-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 19th November, 2012

S.O.3609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2012) of the Central Government Industrial Tribunal No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Hyderabad and their workman, received by the Central Government on 19-11-2012.

[No. L-12025/01/2012-IR (B-I)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE Dr. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 5/2012

All India Bank's Deposit Collector's Federation
TKV Memorial, P.B. No. 3673,
College P.O. Mahakavi Bharathiyar Road,
Ernakulam - 682035 (Kerala)

....Applicant

Versus

The Managing Director,
State Bank of Hyderabad,
Head Office Gunfoundary,
Hyderabad - 500001.

....Respondent

AWARD

In 1974, Janata Deposit Scheme was introduced by State Bank of Hyderabad (in short the bank). To augment collection of money from account holders and open accounts in pursuance of the said scheme, deposit collectors were appointed. Such schemes were also introduced by various other nationalized banks. Service conditions of deposit collectors were not at par with employees of the bank, who were recruited or regular basis. A conflict arose between the deposit collectors and the banks, relating to service conditions of the former. As such, the dispute was referred by the appropriate Government for adjudication to the Industrial Tribunal, Hyderabad on 3-10-1980, wherein question was raised as to whether the deposit collectors were not entitled to pay scales, allowance and over service conditions available to regular clerical employees of the banks. Subsequently by corrigendum issued on 21-8-1983, 37 other banks were made parties to the dispute reference was answered by the Tribunal vide its award dated 22-12-1988, which was challenged before the writ court, Ultimately, matter was taken before the Apex Court by way of SLP, bearing No., 9000/98 wherein deposit collector could not get order in their favour to the effect that they were entitled to pay, allowances and other services conditions equivalent to clerical staff employed by the respective banks. The Apex Court though did not disturb the findings of the Tribunal relating to status of deposit collectors being workmen, but pronounced that they were required to be compensated properly by the banks, relating to their work.

2. Fall back wages of Rs.750.00, determined by the Tribunal vide its award dated 22-12-1988, was based at consumer price index at 500 points (base 1960 = 100). Since the consumer price index went upward, the deposit collectors felt dissatisfied with the amount of fall back wages, determined by the Tribunal. Under the banner of All India Bank Deposit Collectors Federation (in short the Federation), the deposit collectors raised their grievance for enhancement of fall back wages, so determined by the Tribunal, besides enhancement in conveyance expenses, which were being reimbursed by the banks. Ultimately, an industrial dispute was raised before the Conciliation Officer. Since demands were contested by the banks, conciliation proceedings ended into a failure. On consideration of failure report, so submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-12011/35/2003-IR (B-II), New Delhi dated 6-8-2003 with following terms:

> "Whether the demand of All India Banks Deposit Collectors' Federation for linkage of fall back wages of Rs.750.00 as determined by award dated 22-12-1988 by Industrial Tribunal, Hyderabad, which is based on Consumer Price Index at 500 points (Base 1960 = 100) to the present Consumer Price Index and their upward revision is justified? Whether the demand of All India Banks Deposit Collectors' Federation for reimbursement of conveyance expenses at revised and enhanced rate is justified? If so, what relief the said deposit collectors, employed by various banks' represented by the Indian Banks' Association, are entitled to and from which date?"

3. Claim statement was filed by the Federation. All India Bank Collectors. Workmen Union (in short the Union) joined in arrays of parties and filed its claim statement. Indian Banks' Association as well as various other banks filed their respective written statements.

4. Vide order No. Z-22019/6/2007 -IR(C-II) New Delhi dated 11-2-2008, appropriate Government transferred this case to Central Government Industrial Tribunal No.II, New Delhi, for adjudication. Case was retransferred to this Tribunal vide order No. L-22019/6/2007 -IR (B-II), New Delhi dated 30-3-2011 for adjudication.

5. During adjudication process, the bank terminated services of the deposit collectors with effect from 21-1-2012. Aggrieved by the said order, complaint has been moved by All India Bank Deposit Collectors Union (in short the Union) under section 33-A of the Industrial Disputes Act, 1947 (in short the Act) for seeking direction to the bank to continue Deposit Collectors in its service and pay commission/remuneration to them till disposal of the dispute by this Tribunal.

6. The Union pleads that the Janata Deposit Collectors were working with the bank for the last 30-35 years without any break. Deposit Collectors were paid remuneration on the basis of collections of amount deposited by them in the bank, in respective accounts of the account holders. Deposit Collectors are workmen within the meaning of section 2(s) of the Act, as pronounced by the Apex Court in the case of Indian Banks' Association. Deposit collectors are concerned workmen in the dispute which pends adjudication before this Tribunal. By issuance of circular dated 06-2-2010, bank had abandoned the scheme and thrown the deposit collectors out of their employment. Termination of their services with effect from 21-1-2012 is violative of the provisions of section 25-FF and 25-N of the Act. Bank had not obtained permission from this Tribunal and discontinued the scheme, which act make the case of deposit collectors infructious. Indulgence to the Tribunal has been sought, seeking direction of the Bank

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to continue service conditions of the deposit collectors and pay them commission/remuneration till disposal of the industrial dispute.

7. In reply, the bank pleads that Janata Deposit scheme was introduced in 1974. Deposit collectors were appointed for collection of Janata deposits, which arrangement was purely contractual. The scheme was introduced for benefit of the public, particularly small investors and not for the benefit of deposit collectors. With the growth of modern communication and computerization in banking system etc. the scheme became totally unviable. Bank issued circular dated 6-2-2010 seeking to discontinue the scheme with effect from 20-2-2010. Circular, on the strength of which Janata Deposit scheme is being discontinued, is not connected in any manner with the subject matter of the dispute referred by the appropriate Government for adjudication

8. Bank pleads that within 4 days of issuance of the circular, writ petition bearing No.3012/2010 was filed before the High Court of Andhra Pradesh by the Union. The said writ petition was dismissed as withdrawn on 16-11-2010. Bank sought to implement its circular and issued another circular No. 806 of 26-11-2000. Some of the members of the Union approached the High Court of Andhra Pradesh by way of writ petition No. 30331/2010, assailing the aforesaid two circulars. The writ petition was dismissed by the High Court on 3-11-2011. Since the scheme was discontinued, bank discharged all its deposit collectors with effect from 21-1-2012 and paid one months pay to them, as contemplated by the provisions of section 33(2) of the Act. Discharge of deposit collectors from service has no connection, in any manner, with the subject matter of the dispute which pends adjudication before this Tribunal. Bank presents that the complaint under section 33A of the Act is not maintainable, hence it may be dismissed.

9. On pleadings of the parties, following issues were settled :

(i) Whether termination order dated 21-1-2012, passed in respect of Janata Deposit Collectors Collectors come in conflict with the provisions of section 33 of the Industrial Disputes Act? If yes, its effects.

(ii) Whether Janata Deposit Scheme was discontinued on 20-2-2010 and that action answered standards of judicial review ?

(ii) Relief

10. Shri S.D. Ashok Kumar and Shri G. Ramachandran unfolded facts on behalf of the union. Shri P. Venugopal entered the witness box to testify facts on behalf of the Bank. No other witness was examined by either of the parties.

11. Arguments were heard at the bar. Ms.Rashmi B. Singh, authorized representative, presented facts on behalf of the Union. Shri B.A. Ranganathan, authorized representative, advanced arguments on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No.1

12. Shri G. Ramachandran swears in his affidavit, Ex.WW1/A, tendered as evidence, that complaint under section 33A of the Act was filed by the Union on 23-1-2012 before the Tribunal. The Apex Court had ruled that the deposit collectors are workmen within the meaning of section 2(s) of the Act. There existed relationship of master and servant between the bank and deposit collectors. Deposit collectors were concerned with the dispute relating to linkage of their fall back wages with consumer price index and its upward revision, which pends adjudication. By termination of their services, the bank had altered their service conditions, during pendency of the dispute, referred above. In case the bank is permitted to discontinue its scheme, it will frustrate the claim of the Union, in the industrial dispute referred above. Shri H.D. Ashok Kumar, swears same facts in his affidavit Ex.WW2/A, tendered as evidence.

13. Shri P. Venugopal swears in his affidavit, Ex. AW1/A, tendered as evidence, that Janata Deposit Scheme was introduced by the bank in 1974. Under the scheme, deposit collectors were appointed for collection of Janata deposits. Agency arrangements were purely contractual. The scheme was introduced only for the benefit of public, particularly very small investors. On 6-2-2010, bank issued circular for discontinuing the scheme with effect from 20-2-2010. Writ petition was filed before the High Court of Andhra Pradesh challenging the circular referred above, which was withdrawn on 16-11-2010. Bank sought to implement the earlier circular and issued circular No. 806 on 26-11-2010. Some members of the Union approached the High Court of Andhra Pradesh again through writ petition No. 30331/2010. High Court dismissed the said writ petition vide order dated 3-11-2011. On 21-1-2012, bank took steps, after disposal of the writ petition, and discontinued the Janata deposit scheme. It discharged all the deposit collectors and also paid one months' wages to them, besides their gratuity. The scheme was completely non-viable and as such it was discontinued. Discharge of the deposit collectors has no connection whatsoever in any manner with the subject matter of the dispute, which pends adjudication before this Tribunal. During course of his cross-examination, he admits that 90 letters were issued to the deposit collectors for their removal. Contract was signed with the respective deposit collector as and when he joined. After signing of that contact, it continued till the date of his removal. Circulars dated 6-2-2012 and 26-11-2010 were sent to all branches of the bank and were not given to

individually to the deposit collectors. The scheme was discontinued on 21-1-2012.

14. When facts detailed by Shri P. Venugopal, Shri G. Ramachandran and Shri H.D. Ashok Kumar are appreciated, it came to light that Janata Deposit Scheme was introduced by the bank in 1974. To implement the scheme, various deposit collectors were appointed. With these deposit collectors, the bank signed an agreement, individually. Bank continued with the scheme for considerable long period and thereafter decided in 2010 to discontinue it. A circular, Ex. WW1/3 was issued. On perusal of Ex.WW1/3, it came to light that in view of the changing scenario, the scheme was found non-viable. Bank decided to discontinue it with effect from 20-2-2010. Procedure, to be followed, was detailed in Ex.WW1/3. For sake of convenience, the procedure is reproduced thus:

1. To discontinue the scheme with effect from 20-2-2010.
2. No fresh accounts was to be opened.
3. No new deposit collector was to be appointed.
4. No transaction/operation was to be allowed through Janata Deposit Collectors, after 20-2-2010.
5. The existing account holders could continue their accounts till the maturity of the deposits. A letter to the effect of discontinuation of the scheme was required to be sent to the existing deposit holders.
6. The account holders could personally deposit the money into his Janata Deposit account till maturity (if they desire to continue the account).
7. A letter of confirmation of balance from the deposit holders was to be obtained and kept on record.
8. Depositors were to be advised to check their balances on a weekly basis.
9. The JD collectors were not to be allowed to deposit amount in any accounts or do any transaction or perform any function on behalf of the customer/ bank in any manner.
10. A notice was to be displayed to general public at all the branches. A notice on similar lines was also being published, in the local dailies.
11. Compensation to the Janata deposit collectors was to be dealt with by the IR Department.
12. Branches were advised to complete the task of advising all Janata deposit collectors about discontinuation of the scheme by way of letter before 15-2-2010.

15. Above circular was assailed before the High Court of Andhra Pradesh by way of writ petition, was dismissed by the High Court vide its order dated 3-11-2011. In its order, the High Court ruled that continuing of the scheme is not beneficial to the bank and it is resulting in annual losses on account of change of rate of interest from time to time. Economic non-viability of the scheme leaves the bank with no choice but its discontinuation. High Court, relying the order of the Apex Court in transfer case (Civil) No. 79 of 2005 handed down on 28-2-2008, ruled that it does not find any arbitrary exercise of powers in discontinuing the scheme. Its discontinuation cannot be interfered since it is the police decision of the authorities, which is not tainted with malafides or arbitrary. It was also observed in the order by the High Court that issues raised in the industrial dispute do not relate to the issues raised in the writ petition and parties may agitate those issues before the Tribunal.

16. As emerged out of the circular Ex. AW1/4, bank advised all concerned that the scheme has been discontinued with effect from 20-2-2010. It was further mentioned therein that letters be sent to the deposit collectors, enclosing cheque representing gratuity amount. Letters dated 21-1-2012 were written to the deposit collectors individually informing them that the scheme was discontinued with effect from 20-2-2010. It was further mentioned therein that an amount (different amount was mentioned in different letters) equivalent to one month wages, i.e. commission was being credited to their respective accounts. As detailed above, application seeking approval of termination orders was moved by the bank before the Tribunal on 23-1-2012.

17. Section 33 of the Act bars alteration in conditions of service "prejudicial" to the workman concerned in the dispute and punishment of discharge or dismissal when either is connected with pendente lite industrial dispute "save with the permission of the authorities before which the proceedings is pending" or where the discharge or dismissal is for any misconduct not connected with the pendente lite industrial dispute without the "approval of such authority". Prohibition contained in section 33 of the Act is two fold. On one hand, they are designed to protect the workmen concerned during the course of industrial conciliation, arbitration and adjudication, against employers harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings and on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh dispute" which further exacerbate the already strained relations between employer and the workmen. Where industrial disputes are pendente lite before an authority mentioned in the section, it was thought necessary that such disputes should be conciliated or adjudicated upon by the authority in a peaceful atmosphere, undisturbed by any subsequent causes for bitterness or unpleasantness. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to contract or the

provisions of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment, has been banned subject to certain conditions. This ban, therefore, is designed to restrict the interference of the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the object of those provisions. Anxiety, to know about ban on the right of the employer, persuades me to reproduce the provisions of section 33 of the Act herein below:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. —(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall ,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute.

Save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether any dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.— For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed."

18. As noted above sub-sections (1) and (2) are designed for different purposes, since sub-section (1) applies to the proposition when the employer wants to alter service conditions of the workman to his prejudice in regard to any matter connected with the dispute or for any misconduct connected with the dispute, in that situation he is obliged to seek prior permission in writing of the authority before whom the dispute is pending and in a case where the employer wants to alter service conditions

of a workman in regard to a matter not connected with the dispute or for any misconduct not connected with the dispute, in that situation he is obliged to seek approval of the order under sub-section (2) of the aforesaid section. When an employer violates the provisions of sub-section (1) or sub-section (2), of section 33 of the Act, an instant remedy is provided to the workman by the provisions of section 33A of the Act. In other words, where an employer has contravened the provisions of section 33, the aggrieved workman has been given an option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, viz. a Conciliation Officer or a Board of Conciliation, clause (a) of section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority viz. Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

19. Sub-section (2) deals with alteration in the conditions of service or discharge on punishment by dismissal or otherwise of the workman concerned in the pending dispute but in regard to any matter not connected to any such pending dispute, though these provisions also place bar in regard to matters not connected with the pending dispute. It leaves the employer free to discharge or dismiss the workman by paying wages for one month and making application to the authority dealing with pending proceedings, for its approval. There is a distinction between matters connected with the industrial dispute and those unconnected with it. Protection to the workmen in regard to discharge or dismissal for misconduct connected with the pending dispute is available under section 33(1) but stringency of the provisions is softened, by permitting the employer to take action against the workman in accordance with the standing orders applicable to them during pendancy of proceedings in regard to any matter unconnected with the dispute, by section 33(2) of the Act. Clause (b) of sub-section (2) of section 33 and its provisio provide whether action involves 'discharge' or otherwise punishment 'whether by dismissal or otherwise', the employer shall pay wages for one month and make application to the authority before whom the proceedings is pending for its approval of the action taken, immediately after such action has been taken.

20. Whether provision of section 33(2)(b) of the Act would apply to the case of discharge, which was not for misconduct? Import of expression 'discharge' in this context under section 33(2) (b) and its provisio was discussed by the Bombay High Court in National Machinery Manufacturers Ltd. [1961 (2) LLJ 274] and it was ruled that even case of discharge simpliciter was covered by the aforesaid provisions. However, Division Bench took the view that discharge simpliciter, which was not for any misconduct, would not attract provisions of section 33(2)(b) of the Act. It was ruled that above provisions would have no application to the case of discharge, unless it was for misconduct, in National Machinery Manufacturing Ltd. [1964 (1) LLJ 624]. Kerala High Court in Manu [1963 (1) LLJ 212] also took a view that discharge, as contemplated by section 33(2)(b) of the Act, must be discharge for any act of misconduct. Calcutta High Court in Hindustan Motors Ltd. [1965 (1) LLJ 612] followed the view taken by the Division Bench of Bombay High Court. In Assam Oil Co. Ltd., [1960 (1) LLJ 587], the Apex Court ruled that discharge for any act of misconduct is of punitive character and cannot be described as discharge simpliciter, i.e. discharge under the contract. It was further observed that since discharge simpliciter is not for any act of misconduct, it does not attract requirements of section 33 of the Act.

21. In National Engineering Co. [1967(2) LLJ 883], the Apex Court announced that where services of workman stood automatically terminated under relevant Standing Orders, section 33 would not apply because such termination would not be for any misconduct on the part of the workman. Similarly, in Air India Corporation [1972 (1) LLJ 501], the Apex Court ruled that bonafide discharge of workman from services of account of loss of confidence in him cannot be termed as punitive discharge. It was ruled therein that the bar of section 33 operated only in regard to the action for misconduct, whether connected or unconnected with the dispute, hence employer was free to take action against his employees if it is not based on any misconduct on their part.

22. When facts are scammed, it came to light that the first limb of dispute, which pends adjudication before this Tribunal, relates to the demand of the Federation for linkage of fall back wages of Rs.750.00, as determined by Industrial Tribunal Hyderabad, which was based on consumer price index at 500 points (base 1960 equal to 100) to the present consumer price index and their upward revision. The other limb relates to the demand of the Federation for reimbursement of conveyance expenses at revised and enhanced rates. Here in the case, deposit collectors were bade farewell when Janata Deposit scheme was discontinued on account of its non viability. Policy decision taken by the bank was neither found to be arbitrary nor an act of victimization. Thus, it is evident that services of the deposit collectors were dispensed with when the, scheme was discontinued by the bank on 06-10-2010. Therefore, discontinuation of service of the deposit collectors is not at all connected with the dispute, which was referred by the appropriate Government for adjudication.

23. At the cost of repetition, it is said that services of the deposit collectors were dispensed with when Janata Deposit Scheme was discontinued.Termination of their services is not on account of any misconduct or punitive action. Their termination from service is discharge simpliciter. It could not be said that their services were discontinued owing to acts of misconduct. Consequently, it is evident that provisions of Section 33 of the Act do not come into picture. Issue is, therefore, answered in favour of the bank and against the members of the union.

Issue No.2

24. Shri P Venugopal testified that on 06-02-2010, bank issued circular for discontinuing the scheme with effect from 20-2-2010.A writ petition was filed before the High Court of Andhra Pradesh challenging the circular referred above, which was withdrawn on 16-11-2010. Bank sought implementation of earlier circular and issued circular No.806 on 26-11-2010. Some members of the Union approached the High Court of Andhra Pradesh again through writ petition No.30331/2010. The High Court dismissed the said writ petition, vide order dated 3-11-2011.

25. Facts unfolded by Shri Venugoal were not disputed by the Union. In its order dated 3-11-2011, the High Court ruled that continuing of the scheme is not beneficial to the bank and it is resulting in annual losses on account of change of rate of interest from time to time. Economic non-viability of the scheme leaves the bank with no choice but its discontinuation. High Court, relying the order of the Apex Court, in Transfer Case (Civil) No.79 of 2005 handed down on 28.02.2008, ruled that it does not find any arbitrary exercise of powers in discontinuing the scheme. Observations, made by the Apex Court and reproduced by the High Court in its order, are extracted thus:

> "A perusal of the Circular as referred above would clearly show that the Scheme is not economically viable. The Scheme has also contributed a number of frauds. In our view, having regard to the facts mentioned in the order we do not see any arbitrary exercise of power by the authority concerned in discontinuing with the Scheme, as contended by the learned counsel of the petitioners. Similarly, when the concerned authority introduced the Scheme as a policy decision the same authority can discontinue or abandon the Scheme in accordance with a policy decision of the concerned authority. It is now well settled principle of law that the Court does not interfere with the policy decision of the authority concerned unless such decision is tainted with malafide or arbitrary. As already pointed out, on reading of policy decision in Circular dated 4-6-2001, we do not see any arbitrariness or taint of malafide".

26. As projected above, the Apex Court sounds that the courts are not to interfere with the policy decision of the authorities concerned unless it is tainted with malafide or arbitrariness. Scheme was discontinued by the bank, being financially non-viable. In the Circular, referred above, nothing arbitrary was noted. Act of the bank was not found to be malafide. In such a situation, High Court opted not to interfere with the scheme. The same proposition will arise before this Tribunal also, since it cannot question the circular as facts relating to malafide or arbitrariness are also not brought to the light of the day. Consequently, it is announced that the act of the bank in discontinuing the same is genuine.

27. In view of the facts detailed above, it is apparent that action of the bank in discontinuing the scheme was found to be in order by the High Court of Andhra Pradesh, while exercising its jurisdiction of judicial review. Neither arbitrariness nor malafide was noted in the action of the bank. Circulars issued by the bank. were found to be in order. Consequently, it is evident that discontinuation of the scheme is in order and the Union cannot question the policy decision taken by the bank in that regard. The issue is answered in favour of the bank and against the Union.

Relief

28. To attract the provisions of section 33A of the Act, following conditions precedent are to be satisfied.

1. that there should have been a contravention by the management of the provisions of Section 33 of the Act,
2. that the contravention should have been during the pendency of the proceedings before the conciliatory authorities or labour Court, Tribunal or National Tribunal, as the case may be.
3. that the complainant should have been aggrieved by the contravention, and
4. that the application should have been made to the Labour Court, Tribunal or the National Tribunal in which original proceedings are pending.

29. When an employer violates provisions of sub-section (1) or sub-section (2) of Section 33 of the Act, an instant remedy is provided to the workman by the provisions of Section 33A of the Act. In other words, where an employer has contravened the provisions of Section 33, the aggrieved workman has been given an option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating

authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, viz. a Conciliation Officer or a Board of Conciliation, clause (a) of Section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority viz. Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

30. Facts, referred above, make it clear that the provisions of Section 33 of the Act were not contravened by the bank when the scheme was discontinued. Circular dated 26-11-2010 was found to be in order by the High Court of Andhra Pradesh. Therefore, bank discontinued the scheme and passed order of discharge against the deposit collectors, which was not punitive in nature. Provisions of Section 33 of the act do not come into the picture. It cannot be said that the bank has contravened Section 33 of the Act. Consequently, remedy available under Section 33A of the Act cannot be invoked by the Union.

31. In view of these reasons detailed above, it is announced that bank was within its right to discharge the deposit collectors and provisions of Section 33-A of the Act do not come into operation. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 15-10-2012.

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-2012 को प्राप्त हुआ था ।

[सं. एल-41025/01/2012-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O.3610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No.11/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Uttar Railway, and their workmen, received by the Central Government on 19-11-2012.

[No. L-41025/01/2012-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

DR. MANJU NIGAM, Presiding Officer

I. D. No. 11/2012

BETWEEN

Sri Avdesh Kumar S/o Raghuveer
Gram Hari Kunwar Khera
P.O. Nighohan, Lucknow

AND

1. General Manager
Uttar Railway, Baroda House
New Delhi

2. Divisional Manager
Uttar Railway, Hazratganj
Lucknow

3. Mohd. Shaid Faizan Ahmad & Brothers
654 Begam Ka Makbara, Faizabad,
Faizabad (U.P.)

AWARD

1. Statement of claim under Section 2A(2) of Industrial Disputes Act,1947 as amended by Industrial Disputes (Amendment) Act, 2010 has been filed by Sri Avdesh Kumar S/o Sri Raghuveer, Gram Hari Kunwar Khera, P.O. Nighoan, Lucknow for declaring the termination order dated 26-4-2009 void and illegal and for reinstating him with continuity of service with all consequential benefits.

2. Brief facts giving rise to the aforesaid Industrial Dispute is that the applicant was engaged as Box Porter (Driver Box Handling) in the year 3-9-2003 and he worked continuously till 26-4-2009 when his services was terminated without giving any notice or notice pay in lieu thereof. It was further stated that he used to sign on the attendance register and his salary was paid on the basis of attendance register. It was also pleaded that he continuously worked for about 2 years and according to Railway Establishment Rule a petitioner completing 120 days he is entitled for temporary status instead his services have been terminated illegally and some other persons were engaged in his place which is illegal and against the rules

amounting to unfair labour practice. Hence prayer was for declaring the termination order illegal and for reinstating with contionuity of service.

3. Written statement stating therein that the workman was never appointed/engaged at Charbagh Railway Station, Northern Railway Lucknow was filed by opposite party no. 1 & 2. It is further submitted that Railway Administration given the contract to complete the work casual in nature through contractor but contractor himself has denied the engagement of the workman. Beside it is also stated that Railway Administration never engaged the applicant nor retrench him on 26-4-2009. Beside there is no relationship of employee & employer, so that the workman has no right to file the present Industrial Dispute before this Hon'ble Tribunal. For the reasons mentioned about the instant industrial dispute is liable to be rejected in favour of the opposite party.

4. Application W -9 was moved by the petitioner to the effect that he does not want to pursue the aforesaid industrial dispute and therefore is withdrawing the aforesaid dispute no.11/2012. The application, under adjudication is therefore decided accordingly.

5. Award as above

LUCKNOW 17-10-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 2, नई दिल्ली के पंचाट (संदर्भ संख्या 60/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-12011/63/2008-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.60/08) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 21-11-2012.

[No. L-12011/63/2008-IR (B-I)]

SURENDRA KUMAR, Section Officer

ANNEXUREL

IN THE COURT OF SHRI SATNAM SINGH, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-II, KARKARDOOMA COURT COMPLEX ROOM NO. 33(GF), A-BLOCK, KARKARDOOMA, DELHI

I. D. No. 60/08

In the matter between:

Shri Birbal Dogra, through
The Gen.Secy., All India Bank Staff Association,
33-34, Bank Enclave, Ring Road, Rajouri Garden,
New Delhi.

... Workmen

Versus

The Asstt. General Manager, Region-II,
State Bank of India, Zonal Office,
11, Parliament Street, New Delhi-110001.

... Management

AWARD

The Central Government, Ministry of Labour vide order No.L-12011/63/2008- IR (B-1) dated 23-1-2008 has referred the following industrial dispute to this Trihunal for adjudication:

> "Whether the action of Asstt. General Manager, Region-II. State Bank of India, Zonal Office, 11 Parliament Street, New Delhi, in denying full subsistence allowance to Shri Birbal Dogra, Assistant after expiry of 1 year from the date of suspension i.e. 15-12-1995, is just and legal ? If not to what relief the workman concerned is entitled to?"

2. Statement of claim was filed by the workman on 2-4-2009. Written Statement was filed by the management 16-11-2009. On 24-1-2012 when AR for both the parties were present in the court, AR for the management informed the court that the workman has died. On this, AR for the workman sought time to be in touch with the wife of the workman and submitted that thereafter he will take appropriate steps. No steps till today from the side of the workman have been taken. AR for the management says that even the AR for the workman Shri J. N. Kapoor has died. Nobody is pursuing this case at all. In this situation, there is no way out except to pass a no dispute award in this case which is passed accordingly. The reference sent by the Central Government stands disposed of accordingly.

Dated : 22-10-2012

SATNAM SINGH, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टैन्डरर्ड चार्टर्ड बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई नं. 2 के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-11-2012 को प्राप्त हुआ था ।

[सं. एल-12011/24/2005-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.29/2006) of the Central Government Industrial Tribunal-cum-Labour Court No 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Standard Chartered Bank and their workman, which was received by the Central Government on 21-11-2012.

[No. L-12011/24/2005-IR (B-I)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/29 OF 2006

(Ministry's Order No.L-12011/24/2005-IR(B-I), dt. 29-05-2006)

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STANDARD CHARTERED BANK

The General Manager (HR)
Standard Chartered Bank
23-25, M.G. Road
Fort
Mumbai-400 001.

AND

THEIR WORKMEN

The General Secretary
Grindlays Bank Employee's Union
90, M.G. Road
Fort
Mumbai-400001.

Mumbai, dated the 19th October, 2012

CORRIGENDUM TO AWARD DATED 29-06-2012

In the award dt. 29-06-2012 passed in Ref.CGIT-2/29 of 2006, on page 2, at the 11th line of para 2, the date of private agreement is shown as 10-04-1999. The date may be read as 10-03-1999 instead of 10-04-1999.

On page 8 of the award, at the 5th line of para 12, initials of Mr. Fernandes is inadvertently typed as V. J. Fernandes. The initials may be read as B.J. Fernandes instead of V. J.Fernandes.

Date : 19-10-2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2012

का.आ. 3613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-11-2012 को प्राप्त हुआ था ।

[सं. एल-41025/01/2012-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st November, 2012

S.O. 3613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.5/2012) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Uttar Railway and their workman, which was received by the Central Government on 19-11-2012.

[No. L-41025/01/2012-IR (B-I)]
SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT : DR. MANJU NIGAM, Presiding Officer

I.D. No. 5/2012

BETWEEN

Sri Ashok Kumar S/o Sri Mangali Prasad
Gram Hari Kunwar Khera
PO Nighohan
Lucknow

AND

1. General Manager
Uttar Railway, Baroda House
New Delhi

4466 GI/12-23

2. Divisional Manager
Uttar Railway, Hazratganj
Lucknow

3. Mohd. Shaid Faizan Ahmad & Brothers
654 Begam Ka Makbara,
Faizabad
Faizabad (U.P.)

AWARD

1. Statement of claim under Section 2A(2) of Industrial Disputes Act,1947 as amended by Industrial Disputes (Amendment) Act.2010 has been filed by Sri Ashok Kumar S/o Sri Mangali Prasad, Gram Hari Kunwar Khera, P.O. Nighoan, Lucknow for declaring the termination order dated 25-04-2009 void and illegal and for reinstating him with continuity of service with all consequential benefits.

2. Brief facts giving rise to the aforesaid Industrial Dispute is that the applicant was engaged as Box Porter (Driver Box Handling) in the year 03-09-2003 and he worked continuously till 25-04-2009 when his services was terminated without giving any notice or notice pay in-lieu thereof. It was further stated that he used to sign on the attendance register and his salary was paid on the basis of attendance register. It was also pleaded that he continuously worked for about 2 years and according to Railway Establishment Rule a petitioner completing 120 days he is entitled for temporary status instead his services have been terminated illegally and some other persons were engaged in his place which is illegal and against the rules amounting to unfair labour practice. Hence prayer was fot declaring the termination order illegal and for reinstating with continuity of service.

3. Written statement stating therein that the workman was never appointed/engaged at Charbagh Railway Station, Northern Railway, Lucknow was filed by opposite party no. 1 & 2. It is further submitted that railway administration given the contract to complete the work casual in nature through contractor but contractor himself has denied the engagement of the workman. Beside it is also stated that Railway Administration never engaged the applicant nor retrench him on 25-04-2009. Beside there is no relationship of employee & employer, so that the workman has no right to file the present Industrial Dispute before this Hon'ble Tribunal. For the reasons mentioned about the instant industrial dispute is liable to be rejected in favour of the opposite party.

4. Application W-9 was moved by the petitioner to the effect that he does not want to pursue the aforesaid industrial dispute and therefore is withdrawing the aforesaid dispute no.05/2012. The application, under. adjudication is therefore decided accordingly.

5. Award as above

LUCKNOW
17-10-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 6/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-11-2012 को प्राप्त हुआ था ।

[सं. एल 12012/45/2009-आई आर (बी-I)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 22nd November, 2012

S.O. 3614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.6/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman,which was received by the Central Government on 22-11-2012.

[No. L-12012/45/2009-IR (B-I)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 15th November, 2012

PRESENT : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 6/2010

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their Workman.]

BETWEEN

Sri J. Alageswaran : 1st Party/Petitioner

And

The Asstt. General manager
Region-II, State Bank of India
Zonal Office Maduram Complex
Dr. Ambedkar Road
Madurai-2 : 2nd Party/Respondent

Appearance

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates

For the 2nd Party/Management : M/s. T.S. Gopalan & Co. Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12012/45/2009-IR (B-1) dated 8-01-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of State Bank of India, Madurai in imposing the penalty of dismissal on Sri J. Alageswaran w.e.f. 11-03-2004 is justified? If not, to what relief he is entitled to?"

2. After the receipt of the Industrial Dispute, this Tribunal has numbered it as ID 6/2010 and issued notices to both sides. Both sides entered appearance through their Advocates and filed their Claim and Counter Statements as the case may be.

3.The averments necessary for the finding are as follows:

The Petitioner, a Special Assistant, Keelakarai Branch of Respondent/Bank under suspension as per order dated 31-05-2002, but was with no full Subsistence Allowance paid after 12 months in spite of his request letter dated 11-06-2004 under unfair labour practice. On 1-11-2002 he was Charge Sheeted while he was Cash Officer, to which he submitted explanation on 1-11-2002 also mentioning the Management to have had filed Police Complaint and an that an FIR was registered. The complaint states the petitioner to have had defrauded the bank to the tune of Rs. 4,04,600 by obtaining loan with pledging of spurious ornaments. The Management should have waited till the conclusion of the criminal proceeding. Though petitioner filed Writ Petition before the High Court Management proceeded with the enquiry in haste ex-parte. The Enquiry Officer showed personal interest to help the Management. On the enquiry report dated 23-12-2003 notice was issued to the petitioner proposing punishment of dismissal without notice. Without conceding the petitioner's request for reopening the ex-parte enquiry Disciplinary Authority proceeded to accept it. The enquiry is neither fair nor proper. Ex. PEX8 was fabricated by the Management witness Sandhavalian, LIC Agent who had taken the signature of the petitioner in a white paper for preparing a letter for surrender value of the LIC Policy. The authorities failed to apply their mind independently but acted mechanically. Dismissal is illegal, arbitrary and vitiated. The appeal filed by him was also rejected without applying mind on 7-07-2004. The validity of the enquiry has to be determined as a Preliminary Issue. Enquiry Officer's finding is perverse. Hence the claim for reinstatement of the petitioner with full back wages and all benefits invoking Section-11A of the I. D. Act.

4. Counter Statement contentions briefly read as follows:

The misconduct committed by the petitioner are that (a) he recommended for sanction of 12 agricultural loans on the security of spurious ornaments (b) borrowers complained in writing that the petitioner availed the loan in their names by pledging the ornaments owned by the employee and used for his benefit (c) he introduced borrowers S. Jamal Mohammad, T. Mahendran and K. Kader for agricultural gold loans with spurious ornaments and (d) he raised 12 agricultural loans in the name of several persons and one staff gold loan SBL 23/9 in his name with spurious gold ornaments defrauding bank to the sum of Rs. 4,43,419. Petitioner did not offer explanation. He did not attend the enquiry but sent a telegram seeking time alleging sickness from time to time and thus was adopting delaying tactics. He was found normal by the Bank's Medical Officer on 16-09-2003. Hence the enquiry was ex-parte. He did not offer comments to the enquiry findings. High Court dismissed his Writ Petition on 5-02-2004. Appellate Authority by speaking order confirmed the punishment. There is no violation of any decision of Courts. There is no unfair labour practice. On 31-05-2002 he confessed owning responsibility for the fraud in the name of N. Santhavaliyan. Misconduct allegations and offences in the complaint being different, there was no bar in continuing the disciplinary proceedings. There was no stay from the writ proceedings. There was no personal interest from the Enquiry Officer to help the Management. Petitioner deliberately avoided the enquiry without valid reason. He cannot complain that opportunity to defend himself was denied to him. The enquiry was fair and proper and in accordance with procedure. The enquiry is not vitiated. There is application of mind by the authorities. He cannot have any grievance for deliberately of not participating in the enquiry. Punishment is proportionate to the gravity of the misconduct. Findings are not biased. Petitioner has betrayed the trust and confidence of the bank reposed in him. It is denied that petitioner is not gainfully employed. He has already reached the stage for superannuation. Respondent is prepared to adduce additional evidence, if necessary. The claim is to be dismissed.

5. The learned counsel for the petitioner at the time of enquiry argued that the fairness of the enquiry has to be heard and decided as a Preliminary Issue and arguments were advanced on both sides to decide whether the domestic enquiry held is fair and proper. The evidence consists of oral evidence of WW1 and Ex.W1 to Ex.W3 on the petitioner's side and Ex.M1 to Ex.M21 marked on consent with no testimony adduced on the Respondent's side.

6. Upon the materials this Court as per order dated 21-03-2011 had found that the enquiry is not fair and proper. While the matter then stood posted for further proceedings to be availed by the Respondent for an enquiry to fix up the liability or not on the petitioner by proving the misconduct in this Court, the further proceedings remained stayed by the Hon'ble High Court of Madras vide order dated 19-05-2011 in WP No. 12078 and MP No. 1/2011. As per order dated 8-7-2011 the WP was dismissed directing to dispose of the ID on merits, of course within a definite

time frame, which was extended further, whereby the order of this Court regarding the enquiry as being not fair and proper is kept intact.

7. Points for consideration are:

(i) Whether the penalty of dismissal on Sri J.Alageswaran is justified?

(ii) To what relief the concerned workman is entitled?

8. Evidence consists of the oral evidence of MW1 to MW9 by way of Proof Affidavit in lieu of Chief Examination followed by Cross Examination. Proof Affidavit of Sri S. Jamal Mohammad, another witness procured for the Respondent initially filed was not pressed and therefore that part of his evidence by way of Chief Examination is eschewed from evidence (in the wake of the finding on the Preliminary Issue that the enquiry held has not been fair and proper Respondent adduced evidence afresh in Court to prove the misconduct charged against, followed by the evidence adduced by the petitioner already examined as WW1 and marking Ex.W1 to Ex.W3 and thereafter recalling and re-examining WW1 by way of additional Proof Affidavit in lieu of further Chief Examination which was further followed by Cross-Examination on behalf of the Respondent) and further Ex. M26 over and above Ex. M1 to Ex. M25 marked.

Points (i) & (ii)

9. Heard both sides. Perused the records documents and evidence on either side. Both sides keenly argued in terms of their contentions in the pleadings referring to the documents, evidence and the records. The conspicuous arguments on behalf of the petitioner include that the non-examination of Alagappan, another Cash Officer, joint custodian of jewels with the petitioner, and non-examination of P.N. Ramesh, Auditor who detected the spuriousness of the jewels are as being vindictive towards the petitioner since petitioner is not the only responsible Officer of the State Bank of India branch in relation to the transactions involved. The ultimate payment making cashier to whom the voucher was sent for payment was not examined, who if examined would have made clear as to whom the payment was made. There is no evidence to show that the payment was made to the petitioner. The cashier being a witness in criminal case also, there cannot be any plausible explanation for his non-examination. MW6, Sri T. Mahendran has deposed having not gone to the bank to avail the jewellery loan. Evidence is unbelievable and unacceptable. The evidence of witnesses does not reveal any complaint against the petitioner. The conduct of petitioner in having kept silent, if actually there was anything bad in taste in the name of petitioner, would not have been there which is against normal human conduct if the alleged availing of loan on the security of spurious jewels really happened. In the absence of examination of Alagappan, the testimony of MW1 as that of Alagappan cannot have any evidential value deserving consideration. MW4's (Santhavaliyan) evidence cannot be relied upon because according to him he signed only in blank paper initially which was later converted into Ex.M19 letter, contents of which cannot be relied upon as if petitioner admitted everything. Contention on behalf of the Respondent to draw adverse inference cannot be sustained. Advancing a jewel loan to any borrower cannot be thought of without the borrower himself being present for availing the loan. A reply to a Charge Memo is not a must when petitioner had already denied the allegation when memo was issued to him and therefore the same cannot be taken as a flaw on the part of the petitioner to impugn him in relation thereto. Though the jewels may have been spurious, whether they are caused to be deposited at the instance of the petitioner himself or by the borrowers themselves are to be eminently proved. The borrowers are discernibly tutored witnesses to depose falsely against the petitioner and favourably for the Respondent.

10. The contra arguments on behalf of the Respondent are that against the order of dismissal on 11-03-2004 the reference is 6 years thereafter in 2010, without being found mentioned the actual date of raising of the ID commenced with any conciliation. The ID is barred by delay and laches. In State Bank of India only the Cashiers do the work of jewel appraising. Petitioner as Cashier is proved to have been given training by attending seminar vide Ex.M17- Letter of employee to Disciplinary Authority and Ex.M18- Minutes of personal hearing. Still he disowns knowledge of appraising jewel. Witness Mari Achary has testified having appraised the jewels and found them to be spurious. During 2001-2002 petitioner has been the Cashier. He has signed as Cashier on 29-05-2002 together with Branch Manager and MW2 Mari Achary. Petitioner also availed staff gold loan vide Ex. M15-Letter of Branch Manager enclosing acknowledgement and POD. It is also with spurious jewel. The applicants for the jewel loans are only name lenders for the petitioner. Petitioner has admitted Ex.M19 transaction in the name of Santhavaliyan to be spurious only. Ex.M26 is another admission dated 15-07-2002. He disowns knowledge of spurious nature of the jewels claiming that he was duped by his ornaments maker which is just a fallacy. MW3 to MW8 all availed loan for petitioner's benefits only. Another Cashier Alagappan was also proceeded against. Charges are duly proved and the action is only, legal and justified calling for no interference.

11. Reliance was placed on behalf of the Respondent to the decision of the Apex Court in FCI WORKERS UNION VS. FOOD CORPORATION OF INDIA AND ANOTHER (1996-2-LLJ-926) wherein the Apex Court held "The approach made by the Tribunal even in the matter of marshalling or considering the material placed before it, seems to be wrong for the following reasons. The Tribunal was apparently of the view, that there should be "evidence" to prove the facts, as per the provisions of the Evidence Act; It is no so. The Tribunal is not a Court. There should be only 'material' and not evidence as

required by the Evidence Act. It appears that a good many witnesses were examined by another members who was the predecessor of the member, who delivered the final award. The Tribunal has stated that the evidence of the petitioner (workman) is not "duly proved", "legally proved" or proved "beyond reasonable doubt". This approach was also wrong. The only question was whether on weighting the probabilities, the materials placed by the petitioner was acceptable or rendered probable. This Tribunal has considered at length the minute particulars in the case, in the light of the requirements of the Evidence Act, and has made much of the minor lapses in evaluating the probabilities. There are vague generalizations and an unreal or impractical approach to the materials available before it".

12. On a scrutiny of the entire materials on record I am cogently led to the conclusion that the case set up by the petitioner is wholly fallacious. The materials cogently establish the charges leveled against the petitioner giving no room for any doubt. Apart from the admissions made by the petitioner the materials available on record go to establish that he is wholly responsible for the availing of loans with the aid of spurious jewels kept as security by himself for which the other borrowers simply figure as mere name lenders. Though the different witnesses of the Respondent examined in support of the management were hesitating in a way to speak against the petitioner, the tenor of the versions of the witnesses fully tend to support the charges framed by the management against the petitioner for the misconduct committed by him by way obtaining gold loans on the strength of spurious jewels. By way of proceeding against the petitioner there is no victimization meted out towards him. The co-cashier had also been proceeded against by way of enquiry against him. In industrial adjudication rule regarding the degree and nature of evidence required is not one of adequacy but of existence of some legal evidence leading to the conclusion that the petitioner is guilty of the misconduct. Any material logically probative to a prudent mind is enough provided the same is reliable and credible. There is no allergy even to hearsay provided the same is credible and reliable. The non-examination of some of the witnesses due to they being not available at this distance of time is not at material. The arguments advanced on behalf of the petitioner do not merit consideration. That the petitioner has not had come to know certain jewels as being spurious cannot be believed without a pinch of salt. His self-serving statements are made just to wriggle out of the precarious situation in which he was placed with the detection of the jewels as being spurious. It is quite clear to the common knowledge of all to whomsoever it may concern that the petitioner is the real culprit. It is also just lawful to presume so. From all the attendant circumstances of the transaction preponderance of probability could be found to tilt in favour of the Respondent only. It is also pertinent to note in this context that "Law cannot be oblivious to what is obvious to others". On these materials, there need not be any hesitation to hold that the petitioner is guilty of the misconduct. The punishment of dismissal is just proportionate to the gravity of this misconduct and the, same does not call for interference.

13. Resultantly the petitioner is held not entitled to any relief. His dismissal from service is justified.

(Dictated to the PA, transcribed and tped by him, corrected and pronounced by me in the open court on this day the 15 November, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	: WW1, Sri J. Alageswaran
For the 2nd Party/ Management	: MW1, Sri J. Janakimanoharan
	MW2, Sri M. Mari
	MW3, Sri A. Meenakshi Sundaram
	MW4, Sri N. Santhavaliyan
	MW5, Sri K Karungan
	MW6, Sri T. Mahendran
	MW7, Sri M. Panneerselvam
	MW8, Sri M. Abdul Subhan
	MW9, Sri D. Padmanapan

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	22-01-2003	Legal notice caused by the petitioner in reply to letter dated 01-11-2002.
Ex.W2	15-12-2003	Petitioner letter the Enquiry Officer with Postal Acknowledgement Card
Ex.W3	11-06-2004	Petitioner's letter to the Respondent Bank

On the Management's side

Ex. No.	Date	Description
Ex.M1	-	Loan papers of AGL 25/73 in respect of M. Paneerselvam
Ex.M2	-	Loan papers of AGL 25/126 in respect of K. Kader
Ex.M3	-	Loan papers of AGL 25/152 in respect of N. Santhaveliyan .
Ex.M4	-	Loan papers of AGL 25/169 in respect of S. Jamal Mohamad

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Ex. No.	Date	Description
Ex.M5	-	Loan papers of AGL 25/203 in respect of T. Mahendran
Ex.M6	-	Loan papers of AGL 25/224 in respect of K. Kader
Ex.M7	-	Loan papers of AGL 25/284 in respect of M. Abdul Subhan
Ex.M8	-	Loan papers of AGL 26/20 in respect of S. Jamal Mohammad
Ex.M9	-	Loan papers of AGL 26/21 in respect of M. Paneerselvam
Ex.M10	-	Loan papers of AGL 25/78 in respect of T. K. Karungan
Ex.M11	-	Loan papers of AGL 25/87 in respect of A. Meenakshi Sundaram
Ex.M12	-	Loan papers of AGL 25/93 in respect of K. Karna
Ex.M13		Loan papers of AGL 25/9 in respect of J. Alageswaran
Ex.M14	30-05-2002	Letter of the Branch Manager to AGM-II enclosing statement of appraisal of spurious jewels
Ex.M15	03-06-2002	Letter of the Branch Manager enclosing copy of letters received from the borrowers of loan
Ex.M16	30-09-2002	Investigation report
Ex.M17	13-02-2002	Circular dated 13-02-2002
Ex.M18	18-09-2001	Letter of the Branch Manager to AGM Region-II, ZO, Madurai
Ex.M19	31-05-2002	Letter of the petitioner to the Branch.
Ex. M20	30-05-2002	Letter of Azhakappan to the Branch Manager, Kilakarai.
ExM21	01-11-2002	Charge Sheet
Ex.M22	-	13 photos of the spurious jewels.
ExM23	-	Last page No. 56 of the statement giving list of reappraisal of 461 jewel loans
Ex.M24	11-03-2004	Dismissal order.
Ex.M25	07-07-2004	Order of Appellate Authority.
Ex.M26	15-07-2002	Letter from petitioner to the Branch Manager, State Bank of India, Kilakarai

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेंडेन्ट आरकलोजिस्ट, आगरा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 65/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2012 को प्राप्त हुआ था।

[सं. एल 42011/18/2000-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 22nd November, 2012

S.O. 3615.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.65/2000) of the Central Government Industrial Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Superintendent Archaeologist, Agra and their workman,, which was received by the Central Government on 15-11-2012.

[No. L-42011/18/2000-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM- LABOUR COURT, KANPUR

Industrial Dispute No. 65/2000

Between-

Kesh Pal Singh, Organization Secretary.
All India Archaeological Survey Mazdoor Union,
Camp Office, 43/305/18 New Abadi,
Sikandra, Agra,

And

The Superintending Archaeologist,
Archaeological Survey of India,
Agra Circle 22,
Mall Agra Cantt,
Agra.

AWARD

1. Central Government, MoI, New Delhi vide notification no. L-42011/18/2000/IR-DU dated 2-06-2000, has referred the following dispute for adjudication to this tribunal—

2. Whether the demand of the union for compassionate appointment to Sri Suresh son of late Sri Masia and Sri Mahavir Singh son of late Ram Bharosey is just and proper? If so, to what relief the concerned persons are entitled?

3. After exchange of pleadings claimant Sri Suresh and Sri Mahavir Singh did not appear before the tribunal

in support of their pleadings, whereas opposite party has refuted the claim of the claimants in their pleadings as well as opposite party has also adduced in evidence M.W.1 who specifically stated on oath that the claims of the claimant could not be accepted.

4. I have perused the records.

5. Therefore in the given facts and circumstances of the case claimants have miserably failed to prove their claims.

6. Therefore the demand of the union for compassionate appointment of Sri Suresh & Sri Mahavir Singh, could not be said to be just and proper. As such they are not entitled for any relief.

7. The claim is decided against them and in favour of the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2A(2) के अनुसरण में केन्द्रीय सरकार मैनेजिंग डाइरेकटर, इण्डियन टेलीफोन इन्डस्ट्रीज लि. गोण्डा एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 52/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2012 को प्राप्त हुआ था ।

[सं. एल-42025/03/2012-आई आर (डी यू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 22nd November, 2012

S.O. 3616.—In pursuance of Section 2A(2) of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lunknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Managing Director, Indian Telephone Industries Ltd. Gonda & Others and their workman,, which was received by the Central Government on 15-11-2012.

[No. L-42025/03/2012-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present :
DR. MANJU NIGAM, Presiding Officer

I.D. No. 52/2012

BETWEEN

4466 GI/12-25

Sri Ram Bahadur S/o Late Pherai
R/o Kahoba, P.O. Bankatwan Dehat
Police Station, Motiganj, Distt. Gonda
& 2 Others

AND

1. Managing Director,
Indian Telephone Industries Ltd.
Mankapur,
District Gonda

2. The Director,
Indian Telephone Industries Ltd.,
Mankapur,
District Gonda

3. General Manager Production,
Indian Telephone Industries Ltd.,
Mankapur,
Distt. Gonda

4. Additional General Manager
(Personal & Administration)
Indian Telephone Industries Ltd.,
Mankapur
District Gonda

AWARD

1. Statement of claim under Section 2A(2) of Industrial Disputes Act,1947 as amended by Industrial Disputes (Amendment) Act.2010 has been filed by Sri Ram Bahadur S/o Late Pherai R/o Village Kahoba, P.O. Bankatwan Dehat, Police Station, Motiganj, District Gonda & 2 others for call upon the opposite party to conciliate the issue in question and try to settle the matter and in case of failure, the matter' he referred for its adjudication before the proper forum to decide the same on merit.

2. Brief facts giving rise to the aforesaid Industrial Dispute is that the applicant was engaged as Technician B & C on daily wages in May 1987 and was orally terminated on 26-01-1991.

3. Aggrieved by the termination order dated 26-01-1991 claimants alongwith B.L. Shukla filed writ petition no. 4191 (S/S) of 1991 before the Hon'ble High Court, which was dismissed on 27-10-2010 by the single Judge of the Hon'ble High Court on point of alternative remedy. Against this order of Hon'ble High Court, a special appeal no. 535 of 2011 was filed by Chandrika Prasad alongwith other (Ram Bahadur) which was disposed off by the Hon'ble High Court with the direction to this Tribunal which is produced below :—

> "We, therefore, dismiss the special appeal, but given liberty to the appellants to approach the Labour Court. In case the appellants approach the Labour Court by following the process of law within a period of two months from today, the Labour Court shall decide the claim of he appellants without any further

delay, expeditiously, in accordance with law, say within a maximum period of six months thereafter."

4. It was further pleaded that the workman has not been served any notice, nor any compensation. Therefore, termination order is arbitrary and illegal and bad in the eye of law.

5. Opposite party filed objection stating therein that as per Section 2-A the Industrial Disputes Act, 1947 only an individual workman can raise an industrial dispute in case of dismissal, termination and retrenchment. In the present case 3 persons have filed the case, which is contrary to the provisions of Section 2-A of the Industrial Disputes Act, 1947. Beside it was also stated that the prayer has been addressed to the learned Regional Labour Commissioner (C) Lucknow and not to this Tribunal on this ground alone the present application is liable to be dismissed as not maintainable.

6. In pursuance of the objections raised by the management of Indian Telephone Industries Ltd. application W -6 was filed to the effect that claimant does not want to press the I.D. No. 52/2012 due to some technical error. As such Industrial Dispute is decided accordingly.

7. Award as above.

LUCKNOW
22-10-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैनेजिंग डाइरेकटर, इण्डियन टेलीफोन इन्डस्ट्रीज लि. गोण्डा एण्ड अर्दस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम नयायालय, लखनऊ के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2012 को प्राप्त हुआ था ।

[सं. एल-42025/03/2012-आई आर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 22nd November, 2012

S.O. 3617.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lunknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of The Managing Director, Indian Telephone Industries Ltd. Gonda & Others and their workman,, which was received by the Central Government on 15-11-2012.

[No. L-42025/03/2012-IR (DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present :
DR. MANJU NIGAM, Presiding Officer

I.D. No. 51/2012

BETWEEN

Sri Prem Nath S/o Ram Kishun
R/o Village Kandaila,
P.O. Moti Nagar
Faizabad

AND

1. Managing Director,
Indian Telephone Industries Ltd.
Mankapur,
District Gonda

2. The Director,
Indian Telephone Industries Ltd.,
Mankapur,
District Gonda

3. General Manager Production,
Indian Telephone Industries Ltd.,
Mankapur,
Distt. Gonda

4. Additional General Manager
(Personal & Administration)
Indian Telephone Industries Ltd.,
Mankapur,
District Gonda

AWARD

1. Statement of claim under section 2A(2) of Industrial Disputes Act, 1947 as amended by Industrial Disputes (Amendment) Act.2010 has been filed by Sri Prem Nath S/o Ram Kishun R/o Village Kandaila, P.O. Motinagar, Faizabad to call upon the opposite party to conciliate the issue in question and try to settle the matter and in case of failure, the matter be referred for its adjudication before the proper forum to decide the same on merit.

2. Brief facts giving rise to the aforesaid Industrial Dispute is that the applicant was engaged as Technician B& C on daily wages in May, 1987 and was orally terminated on 26-01-1991.

3. Aggrieved by the termination order dated 26-01-1991 claimants alongwith 2 others namely Subodh Kumar and Ram Baran filed writ petition no. 4577 (S/S) of 1991 before the Hon'ble High Court, which was dismissed on 27-10-2010 by the single Judge of the Hon'ble High Court on point of alternative remedy. Against this order of Hon'ble High Court, a special appeal no. 837 of 2010 was

filed by claimant and one another namely Ram Baran which was disposed off by the Hon'ble High Court with the direction to this Tribunal to decide the claim of workmen within 6 months and also provided 2 months time for filing the case before the Tribunal.

4. It was further pleaded that the workman has not been served any notice, nor any compensation. Therefore, termination order is arbitrary and illegal and bad in the eye of law.

5. Opposite party filed objection stating therein that as per Section 2-A the Industrial Disputes Act, 1947 only an individual workman can raise an industrial dispute in case of dismissal, termination and retrenchment. In the present case 3 persons have filed the case, which is contrary to the provisions of Section 2-A of the Industrial Disputes Act, 1947. Beside it was also stated that the prayer has been addressed to the Learned Regional Labour Commissioner (C) Lucknow and not to this Tribunal on this ground alone the present application is liable to be dismissed as not maintainable.

6. In pursuance of the objections raised by the management of Indian Telephone Industries Ltd. application W-5 was filed to the effect that claimant does not want to press the I.D. No. 51/2012 due to some technical error. As such Industrial Dispute is decided accordingly.

7 . Award as above

LUCKNOW
22-10-2012

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 22 नवम्बर, 2012

का.आ. 3618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर जनरल, आगरा जरनल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 46/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-11-2012 को प्राप्त हुआ था ।

[सं. एल-40012/40/2007-आई आर (डीयू)]
सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 22nd November, 2012

S.O. 3618.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 46/2007) of the Central Government Industrial Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Post Master General, Agra Region, and their workman,, which was received by the Central Government on 15-11-2012.

[No. L-40012/40/2007-IR (DU)]
SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM- LABOUR COURT, KANPUR

Industrial Dispute No. 46/07

Between-

Sri Brijesh Kumar son of Sri Om Parkas,
C/o Surender Singh, Advocate,
68 Sector 16, Sikandra Agra.

And

The Post Master General,
Agra Region,
GPO Compound,
Mall Road,
Agra.

AWARD

Central Government, MoL, New Delhi vide notification no.L-40012/40/2007 IR DU dated 20-09-07 has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Post Master General, Agra Region, and Suptd. of Post Office Buland Shahar Division in terminating the services of their workman Sri Brijesh Kumar with effect from 27-10-04 is legal and justified? If not to what relief the workman is entitled to?

3. After exchange of pleadings none of the parties have adduced any evidence in support of their respective claims despite giving of adequate opportunity for the same.

4. Therefore, in the absence of evidence oral as well as documentary claimant has failed to prove his case and it cannot be held that the action of the opposite party is not justified.

5. Therefore, the reference is decided against the claimant and in favour of the management.

6. Reference is decided accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 27 नवम्बर, 2012

का. आ. 3619.—जबकि केन्द्रीय सरकार संतुष्ट है कि लोकहित में ऐसा करना अपेक्षित है कि वित्त मंत्रालय के अधीन निम्नलिखित उद्योगों/प्रतिष्ठानों की सेवाओं को जिन्हे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की विभिन्न मदों के अन्तर्गत शामिल किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवाएं घोषित किया जाना चाहिए, नामत:—

(1) भारत सरकार टकसाल, कोलकाता, नोएडा, मुम्बई, हैदराबाद और चेरियापल्ली जिन्हें प्रथम सूची की मद संख्या 11 में शमिल किया गया है;

(2) भारतीय सुरक्षा मुद्रणालय, नासिक जिसे प्रथम सूची की मद संख्या 12 में शामिल किया गया है;

(3) सिक्यूरिटी प्रिंटिंग प्रैस, हैदराबाद जिसे प्रथम सूची की मद संख्या 12 में शामिल किया गया है;

(4) सिक्यूरिटी पेपर मिल, होशंगाबाद जिसे प्रथम सूची की मद संख्या 21 में शामिल किया गया है;

(5) बैंक नोट प्रैस, देवास जिसे प्रथम सूची की मद संख्या 22 में शामिल किया गया है;

(6) करेंसी नोट प्रैस, नासिक रोड़ जिसे प्रथम सूची की मद संख्या 25 में शामिल किया गया है;

अत: अब, औद्योगिक विवाद अधिनियम, 1947 की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योगों/प्रतिष्ठानों को उक्तयुक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छ: मास की अवधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[सं. एस-11017/4/2011-आई आर (पीएल)]

चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 27th November, 2012

S.O. 3619.—Whereas the Central Government being satisfied that the public interest so requires that the services engaged in the following industries/ establishments under the Ministry of Finance which are covered under different items of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), as under, should be declared as Public Utility Services for the purposes of the said Act:

(1) India Government Mints, Kolkata, Noida, Mumbai, Hyderabad and Cheriapally which is covered by item No.11 of the First Schedule;

(2) India Security Press, Nashik, which is covered by item No. 12 of the First Schedule;

(3) Security Printing Press, Hyderabad, which is covered by item No. 12 of the First Schedule;

(4) Security Paper Mill, Hoshangabad, which is covered by item No. 21 of the First Schedule;

(5) Bank Note Press Dewas, which is covered by item No. 22 of the First Schedule;

(6) Currency Note Press, Nashik Road, which is covered by item No. 25 of the First Schedule.

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industries/ establishments to be a Public Utility Service for the purpose of the said Act for a period of six months.

[No. S-11017/4/2011-IR (PL)]

CHANDRA PRAKASH, Jt. Secy.

नई दिल्ली, 12 दिसम्बर, 2012

का. आ. 3620.— केन्द्रीय सरकार संतुष्ट हो, जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi)के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ.- दिनांक 15-6-2012 द्वारा लोहा एवं इस्पात उद्योग जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 7 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 15-6-2012 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था ।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ: मास की ओर कालावधि के लिए बढ़ाया जाना अपेक्षित है ;

अत: अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ढ़) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 15-12-2012 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[सं. एस-11017/7/2011-आई आर (पीएल)]

चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 12th December, 2012

S . O. 3620.— Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour & Employment, dated 15-06-2012 the services in the Iron and Steel which is covered by item 7 of the First Schedule to the Industrial Disputes Act, 1947 (14. of 1947) to be a Public Utility Service for the purpose of the said Act, for h period of six months with effect from 15th June 2012.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months with effect from 15th December 2012.

[No. S-11017/7/2011-IR (PL)]

CHANDRA PRAKASH, Jt. Secy.

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